

# TIME SHARE DECLARATION

## Neptune House Condominium

This **Time Share Declaration** governs the use and occupancy of Units 1-14 in the Neptune House Condominium as created by a Declaration of Condominium of even date herewith and recorded in the Town of Block Island Land Evidence Records prior hereto.

This **Time Share Declaration** will also govern the use and occupancy of all other Units submitted to the provisions hereof by the recording of any amendments to the Time Share Declaration.

This **Time Share Declaration** is made this 31st day of December, 1985 by NEPTUNE REALTY CORP., a Rhode Island Corporation (the "Declarant"), as the owner in fee simple of Units 1-14 in the Neptune House Condominium (the Unit(s)) , which term shall be deemed to include any Additional Unit as defined herein) of the Neptune House Condominium, Connecticut Avenue, Block Island, Rhode Island as created by a Declaration of Condominium of even date herewith and recorded in the Town of Block Island Land Evidence Records prior hereto.

The Declarant hereby submits the Units to the provisions of the Rhode Island Real Estate Time Share Act R.I.G.L. 34-41 et. seq. (the "Time Share Act") and creates with respect to the Units a Time Share property. The Time Share property created shall be governed by the Time Share Declaration to provide for a common scheme and plan of multi-ownership, use, operation, enjoyment, repair, maintenance, restoration, remodeling and improvement of the Units and the interests therein conveyed or reserved as well as the payment of taxes, assessments and all other expenses relating to the Units.

The Declarant also declares that the Units be held, conveyed, hypothecated, encumbered, leased, rented, occupied and improved subject to all of the terms and provisions contained herein, all of which are in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment of the Units and the interests to be conveyed or reserved. The Units shall be subject to and have the benefit of the limitations, restrictions, covenants and conditions of this Declaration from and after the date of recording and of any amendment hereto. The provisions of this Declaration as amended at any time or from time to time are declared to be restrictions and covenants running with the land, appurtenant to, and for the benefit of all Time Share Owners, their heirs, devisees, successors and assigns, and shall inure to the benefit of the same and shall be binding upon each and every Time Share Interest so conveyed or reserved and all parties having or acquiring any right, title or interest therein.

# Table of Contents

Article 1: [DEFINITIONS](#)

Section 1.1 [Terms Defined in the Time Share Act and the Condominium Declaration](#)

Section 1.2 [Terms Specifically Defined in This Declaration](#)

Article 2: [TERM OF TIME SHARE OWNERSHIP](#)

Article 3: [DESCRIPTION OF TIME SHARE OWNERSHIP PLAN](#)

Article 4: [OPERATION OF THE CONDOMINIUM AND THE TIME SHARE OWNERSHIP PLAN](#)

Article 5: [MEMBERSHIP AND VOTING RIGHTS IN THE NEPTUNE HOUSE CONDOMINIUM](#)

Article 6: [BY-LAWS](#)

Article 7: [TIME SHARE OWNERS' USE RIGHTS](#)

Article 8: [FIXED AND FLEXIBLE TIME WEEK SHARES](#)

Article 9: [MAINTENANCE FEE AND OTHER ASSESSMENTS](#)

Article 10: [UNPAID ASSESSMENT](#)

Article 11: [LIEN FOR UNPAID ASSESSMENT](#)

Article 12: [OBLIGATIONS OF TIME SHARE OWNERS](#)

Article 13: [RESTRICTIONS OF TIME SHARE OWNERS](#)

Article 14: [HOLDOVER TIME SHARE OWNERS](#)

Article 15: [CONVEYANCE OF TIME SHARE OWNERS' INTEREST](#)

Article 16: [RESTRICTION ON TRANSFER OF INTEREST AND STATEMENT OF UNPAID ASSESSMENTS](#)

Article 17: [WAIVER OF RIGHT TO PARTITION](#)

Article 18: MANAGEMENT FIRM

Article 19: MANAGEMENT AGREEMENT

Article 20: ENFORCEMENT AND REMEDIES FOR VIOLATION

Article 21: RIGHT OF ENTRY BY NEPTUNE HOUSE CONDOMINIUM

Article 22: INSURANCE

Article 23: DAMAGE OR DESTRUCTION

Article 24: REPAIRS TO UNIT(S)

Article 25: AMENDMENT TO TIME SHARE DECLARATION

Article 26: RESERVATION OF RIGHTS AND EASEMENTS

Article 27: ADDITIONAL PHASES: AMENDMENT TO THE TIME SHARE DECLARATION

Article 28: APPLICATION

Article 29: MISCELLANEOUS PROVISIONS

A. Leasing

B. Rules and Regulations

C. Maintenance Fees

D. Partial Invalidity

E. No Warranty

F. Gender, Etc.

G. Captions

H. Waiver

I. Notices

J. Interpretation

**K. Governing Law**

**L. Common Furnishings**

**M. Administrative Offices, Models, Signs**

**Article 30: SERVICE OF PROCESS**

**Exhibit A: BY-LAWS OF NHA**

**Exhibit B: TIME SHARE WEEK CALENDAR**

## **Article 1: DEFINITIONS**

### **Section 1.1: Terms Defined in the Time Share Act and the Condominium Declaration**

Capitalized terms are defined herein and in the Plats and Plans, otherwise they shall have the meanings specified or used in the Time Share Act or in the Condominium Declaration recorded immediately prior hereto.

### **Section 1.2: Terms Specifically Defined in This Declaration**

In addition to the terms hereinabove defined, the following terms shall have the following meanings in this Declaration, the By-Laws, and Plats and Plans:

**"Action by Members Without a Meeting"** means the right to and the act whereby the Members may carry on the business of the Neptune House Condominium Association ("NHA") by written balloting in lieu of a Special Meeting.

**"Additional Unit(s)"** means a Unit submitted to this Declaration and the Time Share Ownership Plan by the recording of an amendment to the Declaration.

**"Assessment"** or **"Special Assessment"** means a share of the funds required for the payment of Common Expenses assessed pursuant to the Condominium Declaration as well as any other charges, bills or accounts incurred by the Time Share Owner or Occupant or otherwise assessed by NHA pursuant to this Declaration, including without limitation, the Maintenance Fee.

**"Board"** or **"Board of Directors"** means the executive and administrative entity designated in the By-Laws as the governing body of NHA.

**"By-Laws"** means the By-Laws of NHA which are set forth in Exhibit A of this Declaration.  
**"Common Expenses"** means all expenditures made or incurred by or on behalf of NHA for which Time Share Owners are liable to NHA.

**"Common Furnishings"** means all furniture, furnishings and equipment installed in or supplied to the Unit(s) and also all other tangible personal property required for maintenance and operation of the Unit(s), whether owned or leased by NHA.

**"Declaration"** means this Time Share Declaration, as amended at any time or from time to time. "Fixed Time Share Week" or "Fixed Week" shall mean those weeks designated as such in the Declaration and/or any amendment hereto, the purchaser of which receives the right to the exclusive use and occupancy of a designated Unit during a designated time period each year.

**"Flexible Time Share Season"**, unless otherwise set forth in an amendment for subsequent Phases, shall consist of all Time Share Weeks except those numbered 18-45 & 51-52 (inclusive) as designated by this Declaration and shall run from approximately October to May.

**"Flexible Time Share Week"** or **"Flexible Week"** shall mean those weeks designated as such in the Declaration and/or any amendment hereto, the purchaser of which receives the right to the exclusive use and occupancy of a non- designated Unit on a variable basis rather than for fixed dates of occupancy.

**"Majority of Members"** shall mean, with respect to a Special Meeting, the Members of NHA entitled to vote whose votes equal more than fifty percent (50%) of the votes of all the Members present in person or by proxy at such Special Meeting. With respect to any NHA business carried on by means of an Action by Members Without a Meeting called for by the Board, a "Majority of Members" shall mean the Members of NHA entitled to vote whose votes equal more than fifty percent (50%) of the votes of all the Members having timely returned the proxy or other voting materials. With respect to an Action by Members Without a Meeting called for by direct initiative as provided for in the Time Share Act, a "Majority of Members" shall mean the Members of NHA entitled to vote whose votes equal more than sixty-six (66%) percent of the votes of all of the Members having timely returned the proxy or other voting materials.

**"Management Agreement"** means the Agreement to be entered into by and between NHA (or the Declarant as provided in this Declaration) and a Management Firm providing for the management of the Condominium.

**"Management Firm"** means the entity so identified in the Management Agreement and its successors and assigns.

**"Member"** shall mean those persons who comprise NHA and includes any person or entity who is a Time Share Owner.

**"Occupant"** means the person or persons, other than the Time Share Owner occupying a Unit including, but not limited to, family members, invitees and tenants.

**"Premises"** means Condominium Units 1-14 in the Neptune House Condominium as created by the Condominium Documents. Said terms shall also include any Additional Units submitted to the provisions of this Declaration pursuant to Article 27 hereof. The boundaries of the Units and

any other Additional Units are more particularly described and set forth in the Condominium Documents.

**"Return Date"** shall mean that date as designated by the Board for the return of any ballot for an Action by Members Without a Meeting or final ballots with respect to the election of Directors.

**"Rules and Regulations"** means such Rules and Regulations as the Board or the Management Firm may adopt from time to time relative to the use and occupancy of the Units or any part thereof.

**"Service Hours"** shall mean the period of time between 12:00 noon and 4:00 p.m. on the last day of each Time Share Week or such period of time as set forth in the Rules and Regulations during which time the Units must be vacated and the Units shall be cleaned and made ready for occupancy by the next Time Share Owner or guest. If any Time Share Owner has the right to occupy a Unit during two consecutive Time Share Weeks, the period between 12:00 noon and 4:00 p.m. on the last day of the first of the two consecutive Time Share Weeks, shall not be deemed Service Hours.

**"Special Meeting"** shall mean any meeting of the Members of NHA duly called and authorized by this Declaration.

**"Time Share Ownership"** or **"Time Share Plan"** means a form of fee simple ownership of an individual interest in a Unit and the furnishings of that Unit as a tenant in common with others together with an undivided interest in the Common Elements of the Condominium. The Owner of a Time Share Interest relinquishes his right to continuous use and occupancy of the Unit and accepts the exclusive right to use and occupy a Unit for either a Fixed Week or a Flexible Week. Although the Time Share Ownership Plan with respect to Condominium Units 1-14 includes both Fixed Weeks and Flexible Weeks as more particularly set forth on Exhibit B, it is possible that the Time Share Ownership Plan with respect to subsequent Phases may have different characteristics. The Declarant has retained the right to alter the Time Share Ownership Plan for any subsequent Phases pursuant to Article 27 hereof.

**"Time Share Week"** means one (1) of fifty-two (52) periods of occupancy which shall consist of not less than seven (7) days commencing on the first Saturday in each year. Time Share Week No. 2 is the seven (7) days next succeeding. Additional weeks up to and including Time Share Week No. 51 are similarly computed. Time Share Week No. 52 contains the seven (7) days succeeding the end of Time Share Week No. 51 without regard to the month or year. In certain years there will be a 53rd Time Share Week which will be available for occupancy on a reservation basis to those Time Share Owners with the right to use Flexible Weeks. Time Share Weeks run from 4:00 p.m. on the first Saturday of the period to noon on the last Saturday of the period.

**"Maintenance Fee"** shall mean that Assessment made by NHA against all Time Share Owners on the basis of the number of Time Share Interests owned.

## **Article 2: TERM OF TIME SHARE OWNERSHIP**

This Declaration shall become effective upon the date of the recording hereof. Subject to the rights of the Declarant to amend this Declaration as set forth in Article 25, this Declaration shall continue in full force and effect until such time as the Time Share Plan is terminated as provided in the Time Share Act or the Condominium is terminated as provided in the Condominium Declaration or in the Condominium Act.

## **Article 3: DESCRIPTION OF TIME SHARE OWNERSHIP PLAN**

The Time Share Ownership Plan presently applies to Units 1-14 at the Neptune House Condominium. The Declarant has reserved, pursuant to Article 27 hereof, the right to submit other Units to this Declaration and the Time Share Ownership Plan by the recording of amendments to this Declaration. Units 1-14 is sometimes hereinafter referred to as Phase I of the Time Share Ownership Plan. Additional Units as they are submitted to the Time Share Ownership Plan by the recording of an amendment to this Declaration shall be assigned a Phase number in accordance with its order of submission in relation to other Phases. Nothing in this Article shall be deemed to obligate the Declarant to submit any other Condominium Units to the Time Share Ownership Plan.

Units 1-14 (Phase I) contains fourteen (14) Units to be used by Time Share Owners as well as by transient guests in the regular operation of the Condominium. There are twenty-eight (28) Fixed Weeks and twenty-four (24) Flexible Weeks available in Phase I of the Time Share Ownership Plan. Therefore, there is a maximum of 728 Time Share Interests available in Phase I exclusive of any Maintenance Periods.

With respect to subsequent Phases, the number and type of Time Share Interests available in the Additional Units may vary from the Time Share Ownership Plan as designed for Phase I-A. In such event the amendment to this Declaration shall set forth the descriptive characteristics of the modified Time Share Ownership Plan as it applies to such Additional Units.

Each Time Share Interest shall be treated and considered as an individual property capable of independent use and conveyance. The Declarant shall convey to each purchaser of a Time Share Interest an undivided percentage interest in the fee of a specific Unit which has been submitted to the provisions of this Declaration and its proportionate percentage interest in the Common Areas as a tenant-in-common with the other Time Share Owners of said Unit, subject to the terms, conditions, restrictions and agreements set forth in the Time Share Ownership Plan, this Declaration and any amendments thereto and the Condominium Documents, as the same may be amended from time to time. The undivided ownership interest of each Time Share Owner shall be determined by the total number of Time Share Interests sold in the Unit, including those owned by the Declarant.

## **Article 4: OPERATION OF THE CONDOMINIUM AND TIME SHARE OWNERSHIP PLAN**

The operation and regulation of the Condominium, including without limitation, the maintenance and repair of the Units and Common Furnishings and the administration of the affairs of Time Share Owners with respect to the use and occupancy of the Units, payment of expenses and costs and, in general, the promotion of the welfare and goals of the Time Share Owners shall be under the direction and control of NHA.

The NHA shall have all of the powers and duties set forth in the Declaration and the By-Laws of NHA including, but not limited to, the following:

(a) to repair, maintain, repaint, remodel, furnish or refurnish any part of the Units to establish reserves for anticipated costs, including the acquisition and replacement of capital items and furnishings; and to acquire and pay for materials, supplies, furniture, furnishings, labor or services which NHA deems necessary or proper for the maintenance and operation of the Unit(s);

(b) to pay all taxes and assessments, including assessments by NHA as created by the Condominium Documents, and all other costs or charges affecting or relating to the Unit(s); and to discharge, contest or protest liens or charges affecting the Unit(s);

(c) to obtain and pay the cost of electrical, telephone gas, cable television and other utility services for the Unit(s);

(d) to obtain and pay the cost of legal and accounting services necessary or proper for the maintenance and operation of the Unit(s) and the enforcement of this Declaration;

(e) to obtain and pay the cost of casualty and liability insurance covering the Unit(s) to the extent and in the manner provided for in the Time Share Act;

(f) to exercise on behalf of the Time Share Owners the voting rights and other membership rights of the Time Share Owners in the NHA;

(g) to do all other acts or things necessary or appropriate to the ordinary and necessary operation and maintenance of the Unit(s) or to preserve and protect the Unit(s) in the event of any emergency including specifically, without limitation, all powers and duties set forth in the Time Share Act;

(h) to delegate the authority and responsibilities of NHA to a Management Firm for such periods and upon such terms as NHA deems proper;

(i) to adopt and amend budgets for revenues, expenditures and reserves and to levy and collect from each Time Share Owner all Assessments including the Maintenance Fee, to enforce the payment of such Assessments and to take proper steps to enforce any Time Share Owner's



obligations hereunder (the procedure for the determination of all such Assessments shall be as set forth in this Declaration and the By-Laws of NHA);

(j) to enter into agreements with organizations providing exchange services between owners of Time Share Interests in the Unit(s) and owners of similar interests in other resorts and collect any necessary fees resulting from same;

(k) to institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Time Share Owners on matters affecting the Unit(s); and

(l) to acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, including, without limitation, Time Share Interests.

## **Article 5: MEMBERSHIP AND VOTING RIGHTS IN THE NEPTUNE HOUSE ASSOCIATION**

The Declarant and every person or entity who is a Time Share Owner shall be a member of NHA, an unincorporated association created for the purpose of managing and regulating the use of the Unit(s) and the operation of the Time Share Ownership Plan, provided, however, that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member. Such membership shall automatically terminate when such person or entity conveys or otherwise transfers his Time Share Interest.

The total number of potential votes to be cast by Time Share Owners shall be equal to the sum of all Time Share Interests in the Unit(s) which have been duly created by this Declaration or any amendment hereto. Each amended Declaration shall set forth the total number of Time Share Interests existing in the Unit(s) at the time of the recording of such amendment and such number shall be conclusive for the purposes of determining the total number of potential votes to be cast by Time Share Owners.

Each Member shall be entitled to one (1) vote for each Time Share Interest owned. If any Time Share Interest is owned by more than one person, the record owners of said Time Share Interest shall be entitled to only one (1) vote, the splitting of votes being prohibited. To that end, whenever a Time Share Interest is owned of record by more than one person, the several owners of such Time Share Interest shall (a) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such Time Share Interest hereunder, and (b) notify the Board of such designation by notice in writing signed and acknowledged by all of the record owners of such Time Share Interest. Any such designation shall take effect upon receipt by the Board and may be changed at any time by notice as aforesaid. In the absence of any such notice of designation, the Board in its sole discretion may designate any one such owner for such purposes on whatever basis the Board deems reasonable. In the event the Board does not make any such designation the name first

appearing on the deed to such Time Share Interest shall be deemed to have been so designated.

## **Article 6: BY-LAWS**

All aspects of the operation of NHA shall be governed by the By-Laws of NHA which are attached hereto as Exhibit A. No modification of or amendment to the By-Laws of NHA shall be valid unless set forth in or annexed to an amendment to this Declaration and duly recorded. The By-Laws may be amended in the manner provided for therein, but no amendment to said By-Laws shall be adopted which would affect or impair the validity or priority of any mortgage covering any Time Share Interest. No amendment of the By-Laws shall change or in any way impair the rights and privileges of the Declarant without its prior written consent. Each Time Share Owner shall have the benefit of and be subject to the By-Laws of NHA.

## **Article 7: TIME SHARE OWNERS' USE RIGHTS**

The Time Share Ownership Plan has been designed to accommodate two modes of time sharing use. In addition to the conveyance of an undivided percentage interest in a specific Unit as described in Article 3, a Time Share Owner shall also acquire the right to one or more of the following:

- (a) A Fixed Week whereby the Time Share Owner shall have the exclusive right to occupancy and use of a designated Unit (to be chosen by the Time Share Owner at the time of the execution of his purchase and sale agreement) during the same Fixed Week each successive year; or
- (b) A Flexible Week whereby the Time Share Owner shall have the exclusive right to occupancy and use of a Unit designated by the Management Firm (which may not necessarily be the same Unit as occupied during an Owner's Fixed Week) on a variable basis each year during the Flexible Season. The time and manner of such use and occupancy shall be in accordance with the Rules and Regulations and the reservation procedures specified by the Management Firm from time to time; and
- (c) The non-exclusive right to use and enjoy the Common Areas of the Condominium and the Common Areas and recreational facilities of the Unit(s) during such periods of occupancy.

The Declarant has retained the right to alter the Time Share Ownership Plan with respect to subsequent Phases only. However, unless otherwise modified and described in the applicable amended Declaration, all Time Share Owners' Use Rights shall be as set forth herein.

Notwithstanding the foregoing, no Time Share Owner or Occupant shall have the right to occupy or use a Unit during Service Hours. In order to maximize the availability of space to fulfill each Time Share Owner's desires relating to reservations, each Unit shall be available for reservation, occupancy and use by every Time Share Owner and each deed shall contain a reservation of the

right of exclusive use and occupancy for the benefit of all other Time Share Owners during all Flexible Weeks except Maintenance Periods.

No Time Share Owner shall occupy any Unit, or exercise any other rights of ownership with respect to Unit(s), Common Elements of the Condominium and the Common Furnishings and equipment contained therein, other than the rights herein provided, during any other Time Share Week other than the Fixed Week identified in his deed or the Flexible contracted for with the Management Firm unless expressly so authorized by the owner of said Week or as a transient guest of the Condominium, Each Time Share Owner shall keep the Unit and all Common Furnishings and equipment in good condition and repair and shall commit no waste thereof during the term of his Time Share Week and shall vacate the Unit at the time established by the Rules and Regulations, and otherwise shall comply with such reasonable occupancy Rules and Regulations and other procedures as shall be established from time to time by the Management Firm or NHA.

## **Article 8: FIXED AND FLEXIBLE TIME SHARE WEEKS**

For the purpose of designating certain Time Share Weeks as Fixed weeks and the balance as Flexible Weeks, Exhibit B has been attached hereto and made a part of the Declaration. Those Time Share Weeks numbers designated as Fixed Weeks shall remain as such in each successive year. For the purposes of administrative convenience and future conveyancing, each of the Flexible Weeks will be numbered consecutively and identified on the Time Share Owner's deed (which number shall be for identification purposes only).

The designation of Fixed Weeks and Flexible Weeks available in additional Phases shall be as set forth in Exhibit B attached hereto unless otherwise modified and described in any applicable amendment to this Declaration.

## **Article 9: MAINTENANCE FEE AND OTHER ASSESSMENTS**

Time Share Owners shall pay a Maintenance Fee to NHA or its designee for each Time Share Interest owned. The Maintenance Fee shall consist of, but is not limited to, the following Common Expenses:

- (i)-Time Share Owners' share of the Unit(s)' regular assessment as determined by NHA;
- (ii)-Repair and upkeep of the Unit(s) required by normal wear and tear;
- (iii )-Repair, renovation, leasing or replacement of Common Furnishings;
- (iv)-Casualty and/or liability insurance on the Unit(s) covered by the policy obtained by NHA;
- (v)-Charges for utility services for the Unit(s);

(vi)-Personal property, real estate and any other applicable taxes;

(vii)-Fee of the Management Firm for services performed in accordance with its contract;

(viii)-Any other reasonable expenses incurred in the normal operations and maintenance of the Unit(s) which cannot be attributed to a particular Time Share Owner.

The Maintenance Fee for each Time Share Interest shall be determined by multiplying a fraction, the numerator of which is the number of Time Share Interests owned by a particular Time Share Owner and the denominator of which is the total number of Time Share Interests in the Unit(s) as of the first day of each fiscal year of NHA, by the total of all Common Expenses as determined by the Board, and shall then be assessed against and pro-rated among all of the Time Share Owners in proportion to the number of Time Share Interests owned. An equitable adjustment shall be made to the Maintenance Fee to account for additional expenses allocable to two bedroom and one bedroom Units over those expenses allocable to the studio Units.

Notwithstanding the above, the Association shall have the power to levy pro rata Special Assessments against each Time Share Owner and his Time Share Interest(s) in the event the regular Maintenance Fee is not sufficient to cover the anticipated operating expenses.

In addition, the Management Firm on behalf of NHA shall charge and collect from each Time Share Owner or his lessees or guests, on a current basis, for those expenses attributable directly to said Time Share Owner's use and occupancy of the Unit including, but not limited to, the following:

(a)-Repairs and charges for damage to the Unit and the Common Furnishings caused by the Time Share Owner or his lessee or guest (excluding normal wear and tear);

(b)-Telephone charges;

(c)-Assessments by any reciprocal membership association of resorts organized for the purpose of exchanging use of time share properties.

Pursuant to the procedures set forth in the By-Laws, the Board of Directors shall approval an annual budget for the Unit(s) in advance for each fiscal year and the budget shall project anticipated income and estimated expenses. Failure of the Board to include any item in the annual budget shall not preclude the Board from levying a Special Assessment in any calendar year for which the budget has been already projected. Notwithstanding any other provision of this Declaration, the Board may at its option make a determination to exclude from the Maintenance Fee all or any part of the personal property, real estate and any other applicable taxes not billed directly to the Time Share Owners by the appropriate governmental authority. In the event the Board makes such a determination, the Time Share Owners shall be separately assessed for said taxes based upon the formula provided for herein for the proration of the Maintenance Fee.

After adoption of a budget and determination of the Maintenance Fee, NHA shall assess such sum by promptly notifying all Time Share Owners by delivering or mailing notice thereof to the Time Share Owner at the address shown on the records of NHA by United States mail, first class, with postage prepaid. Maintenance Fees shall be due and payable at such times as is determined by the Board. Special Assessments shall be due and payable ten (10) days after delivering or mailing notice thereof to the Time Share Owner as set forth herein.

The Time Share Owner(s) of record shall be personally liable, jointly and severally as the case may be, to NHA for the payment' of all Maintenance Fees and other Special Assessments and charges made against him by NHA pursuant to this Declaration and the By-Laws, as well as all costs of collection of the same.

## **Article 10: UNPAID ASSESSMENTS**

Assessments for Maintenance Fees and any other Special Assessments and charges that are unpaid for more than ten (10) days after the due date shall bear interest from the due date until paid at a rate of interest to be determined by the Board but in no event to exceed that permitted by applicable laws. In addition, at the sole discretion of the Board of Directors, a reasonable late charge shall be due and payable. A subsequent purchaser of one or more Time Share Interests, other than a purchaser at a foreclosure sale, shall be liable for the payment of any assessments against such Time Share Interests which are unpaid at the time of such purchase.

## **Article 11: LIEN FOR UNPAID ASSESSMENTS**

NHA shall have a lien upon each Time Share Owner's Time Share Interest for all unpaid Assessments, Special Assessments, late charges, fines and other charges assessed pursuant to the term hereof, together with interest thereon. Expenses incurred by NHA, including reasonable attorneys' fees, incident to the collection of such assessments or the enforcement of such lien, together with all sums advanced and paid by NHA for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by NHA, in order to preserve and protect its lien, shall be payable by the Time Share Owner and secured by such lien. NHA may take such action as it deems necessary to collect assessments by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if deemed in the best interests of NHA. Said lien shall be perfected from and after the time of recording of a claim of lien stating the name of the Time Share Owner of record, the percentage interest of said Time Share Owner, the description of the Time Share Interest, the amount due and the date when due, and the said lien shall continue until all sums secured by the lien shall have been fully paid. All such claims of lien shall be signed and verified by an officer or agent of NHA which may include the Management Firm. Where any such lien shall have been paid in full, the party making payment thereof shall be entitled to receive a satisfaction of such lien in a form suitable for recording. Any such lien shall be as provided for by the Time Share Act or in the absence thereof as provided for in the Condominium Act for liens of unpaid condominium common expenses and shall have the priorities established by the Time Share Act or the Condominium Act. NHA shall be entitled to bid at any sale held pursuant to foreclosure of a lien for unpaid assessments, and to

apply as a cash credit against its bid, all sums due, as provided herein, and covered by the lien being enforced. Said lien shall be limited to the Time Share Interest owned by the defaulting Time Share Owner and shall not encumber the interest of any other Time Share Owner.

In the event an institutional lender, or other purchaser, obtains title to such Time Share Interest, as a result of foreclosure by the institutional lender, or if an institutional lender accepts a deed to such Time Share Interest in lieu of foreclosure, the person or entity so acquiring title shall not be liable for any assessments by NHA pertaining to such Time Share Interest, or chargeable to the former Time Share Owner which became due prior to acquisition of title as a result of the foreclosure. Such unpaid assessments shall be deemed to be Common Expenses collectible from all Time Share Owners including the person or entity acquiring title.

No person who acquires a Time Share Interest, except through foreclosure by an institutional lender, or the acceptance by an institutional lender of a deed in lieu of foreclosure, shall be entitled to the occupancy of a Suite or enjoyment of the Unit(s) until such time as all unpaid assessments due and owing by the former Time Share Owner have been paid. NHA shall have the right to assign its claim for the recovery of any unpaid assessments to the Declarant, or to any Time Share Owner or group of Time Share Owners or to any third party.

## **Article 12: OBLIGATIONS OF TIME SHARE OWNERS**

Every Time Share Owner (in addition to other obligations and duties set out herein) agrees:

(i)-To promptly pay the Maintenance Fee and Special Assessments and any other charges levied by NHA;

(ii)-To be subject to and abide by the provisions of the Declaration, the By-Laws and the Rules and Regulations and to ensure that all of his guests abide by same;

(iii)-Not to make, cause or permit to be made, any repairs, modifications, alterations, or replacements of or to the interior or exterior of the Unit(s) or any Common Element, or to the Common Furnishings, or the decor thereof;

(iv)-That NHA shall determine the interior color scheme, decor and Common Furnishings of the Unit(s), as well as the proper time for redecorating and replacements thereof; and

(v)-That the expenses of repairs or replacements to the Unit(s) or its components, Common Furnishings, or other property, real, personal, or mixed, occasioned by the specific use or abuse of any Time Share Owner or any licensee or guest of said Time Share Owner shall be borne in their entirety by the Time Share Owner. NHA shall submit an invoice directly to the Time Share Owner. In the event said Time Share Owner fails to pay the same within ten (10) days of receipt thereof, NHA shall file a claim of lien against said Time Share Owner's Time Share Interest in accordance with Article 11 hereof.

## **Article 13: RESTRICTIONS ON TIME SHARE OWNERS**

Each Time Share Owner shall occupy and use his Unit only as a residential private dwelling for himself and the members of his family, his social guests, lessees, licensees and invitees only in such numbers as may be permitted by the Rules and Regulations or by the Management Firm. Notwithstanding the foregoing, nothing in this Declaration shall be deemed to be a restriction on the Declarant from conveying Time Share Interests hereunder. The Time Share Owner shall not permit or suffer anything to be done or kept in any Unit which will increase the rate of insurance upon the Unit(s), or which will obstruct or interfere with the rights of other Time Share Owners, or annoy them by unreasonable noises, or otherwise, nor shall any Time Share Owner commit or permit any nuisance, immoral or illegal acts in or about the Unit(s).

## **Article 14: HOLDOVER TIME SHARE OWNERS**

In the event any Time Share Owner fails to vacate his Unit at the expiration of his Time Share Week(s), or at such earlier time as may be fixed by the Rules and Regulations, he shall be deemed a "Holdover Owner". It shall be the responsibility of NHA to take such steps as may be necessary to remove such Holdover Owner from the Unit, and to assist the Time Share Owner of any subsequent Time Share Week, who may be affected by the Holdover Owner's failure to vacate, to find alternate accommodations during such holdover period.

In addition to such other remedies as may be available to it, the NHA shall secure, at its expense, alternate accommodations for any Time Share Owner who may not occupy his Unit due to the failure to vacate of any Holdover Owner. To the extent available such accommodations shall be comparable to the Unit intended to be used by the displaced Time Share Owner. The Holdover Owner shall be charged for the cost of such alternate accommodations, any other costs incurred due to his failure to vacate and an administrative fee of \$350.00 per day during his period of holding over. In the event it is necessary that NHA contract for a period greater than the actual period of holding over, in order to secure alternate accommodations as set forth above, the entire period shall be the responsibility of the Holdover Owner, although the \$350.00 per day administrative fee shall cease upon the actual vacating by the Holdover Owner.

NHA shall submit a bill to the Holdover Owner in accordance with this paragraph. In the event the Holdover Owner fails to pay the bill within ten (10) days of the date of same, NHA may file a lien against said Holdover Owner's Time Share Weeks in accordance with the provisions of Article 11. The above provisions shall in no way abridge or limit the right of NHA to take such other action against the Holdover Owner as is provided or permitted by law.

## **Article 15: CONVEYANCE OF TIME SHARE OWNERS INTEREST**

A Time Share Owner may convey, assign, mortgage, devise or otherwise transfer his Time Share Interest subject to the following:

(i)-Any such transfer shall be made by a deed or other written instrument specifying the undivided interest of said Owner, the specific Fixed Week identified and/or the specific number of the Flexible Week identified and shall be made subject to and with the benefit of the terms of this Declaration; any instrument of transfer shall provide that acceptance thereof shall constitute an assumption of the provisions of the Declaration, the By-Laws, the Rules and Regulations, and the Condominium Documents as the same may be amended from time to time;

(ii)-As provided in Article 3 of this Declaration, the right to use and occupy a Unit during a Time Share Week (whether Fixed or Flexible) shall be deemed appurtenant to the undivided percentage interest in a specified Unit and no Time Share Owner shall convey, assign, mortgage, devise or otherwise transfer the right to use a Time Share Week separate from said undivided percentage interest nor shall a Time Share Owner convey, assign, mortgage, devise or otherwise transfer said undivided percentage interest separate from the right to use a Time Share Week,

(iii)-Any instrument purporting to convey, assign, mortgage, devise or otherwise transfer either a Time Share Week or the undivided interest in the Unit to which it is appurtenant without including both such interests, shall be deemed and taken to include the interest so omitted, even though the latter shall not be expressly mentioned or described therein.

## **Article 16: RESTRICTION ON TRANSFER OF INTEREST AND STATEMENT OF UNPAID ASSESSMENTS**

No Time Share Owner shall sell, convey, mortgage, lease or otherwise transfer his Time Share Interest unless he shall have theretofore paid to NHA all Maintenance Fees and other assessments and charges assessed to him. Any Time Share Owner, having executed a contract for the transfer of his Interest, shall be entitled, upon written request to the President, Treasurer or Secretary of NHA and payment of a reasonable fee which shall be fixed by the Board of Directors, to a recordable statement setting forth the amount of unpaid assessments currently levied against his Time Share Interest. Such statement shall be binding upon NHA, the Board of Directors and every Time Share Owner and shall operate to discharge the Time Share Interest from any lien for any other sums then unpaid when recorded in the Town of Block Island Land Evidence Records.

## **Article 17: WAIVER OF RIGHT TO PARTITION**

Each Time Share Owner, by acceptance of the deed conveying title to a Time Share Interest, whether from the Declarant or a subsequent owner of a Time Share Interest, shall for himself, his heirs, devisees, successors and assigns, covenant, consent and agree to and with Declarant and all other Time Share Owners, to waive and relinquish, for the term that this Declaration is in force



and effect, any and all rights which said Time Share Owner may now have or hereafter acquire to cause a judicial partition of his Time Share Interest(s). No Time Share Owner or other person or entity acquiring any right, title or interest to a Time Share Interest shall seek or obtain through any legal proceeding, a judicial partition of a Time Share Interest prior to the termination of this Declaration; provided, however, that nothing contained herein shall prohibit the judicial sale of a Time Share Interest owned by two or more persons in lieu of partition as between such co-owners.

Notwithstanding the foregoing, if any court of competent jurisdiction holds the above waiver invalid and orders the partition of a Time Share Owner's Time Share Interest, the Board of Directors shall purchase such interest on behalf of NHA and assess the cost thereof to all Time Share Owners as a Special Assessment based upon the Time Share Owner's proportional interest in the Unit. NHA may sell or retain such purchased Time Share Interest in the same manner and to the same extent as if it had been obtained through judicial foreclosure of a lien.

## **Article 18: MANAGEMENT FIRM**

The Board of Directors acting on behalf of NHA may enter into a Management Agreement with any firm, person or corporation for the management, maintenance and repair of the Unit(s), and may delegate to the Management Firm all of the powers and duties of NHA, except such as are specifically required by this Declaration, the By-Laws, or by the Time Share Act to have the approval of the Board. The Management Firm may be authorized to determine the budget, determine the Maintenance Fee, and Special Assessments and collect same, as provided by this Declaration, the By-Laws and the Rules and Regulations.

Notwithstanding the above and subject to the applicable provisions of the Time Share Act, if any, governing the recall of the Management Firm, for a period of seven (7) years from the effective date of this Declaration or until such time as the Declarant has conveyed seventy-five percent (75%) of all Time Share Interests (which for the purposes of this paragraph shall include all Time Share Interests which the Declarant has the right to create pursuant to Article 27 hereof), whichever is later, Declarant shall have the right to enter into such Management Agreement on behalf of NHA.

Each Time Share Owner by his acceptance of the deed to a Time Share Interest does hereby constitute and appoint the Management Firm acting from time to time with full power of substitution, as his true and lawful attorney in his name, place and stead to

(a)-deal with, for and in the best interest of such Time Share Owner upon damage to or destruction of any personal property in the Condominium; and

b) to enter into all agreements which the Management Firm is authorized to enter into pursuant to the terms of this Declaration and which the Management Firm in its discretion believes to be necessary and proper to carry out the Management Firm's responsibilities and duties.

Each Time Share Owner stipulates and agrees that the power of attorney executed by this Article 18 is coupled with an interest. The action of the Management Firm in settling any claim for damage to any personal property shall be binding upon each Time Share Owner.

A copy of any such Management Agreement shall be made available to any Time Share Owner who so requests in writing. The Board of Directors may require the Time Share Owner to pay the costs of photocopying and postage.

## **Article 19: MANAGEMENT AGREEMENT**

Pursuant to the provisions of Article 18, the Declarant expects to enter into a Management Agreement, a copy of which will be available for inspection at the offices of Declarant. Each Time Share Owner, his heirs, successors and assigns, shall be bound by the terms and provisions of said Management Agreement and any subsequent Management Agreement properly entered into by the Declarant and/or NHA and further:

(i)-Adopts, ratifies, confirms and consents to the execution of said Management Agreement by the Declarant or NHA.

(ii)-Covenants and promises to perform each and every of the covenants, promises and obligations to be performed by Time Share Owners as provided therein.

(iii)-Ratifies, confirms and approves all the provisions of said Management Agreement, and acknowledges that all of the terms and conditions are reasonable.

(iv)-Agrees that the Declarant by entering into such an Agreement has not breached any provision of this Declaration or any rights or duties or obligations to NHA.

## **Article 20: ENFORCEMENT AND REMEDIES FOR VIOLATION**

Each Time Share Owner and all other persons occupying or using a Unit shall comply strictly with the provisions of the Declaration, the By-Laws, the Rules and Regulations, and the Condominium Documents as the same may be lawfully amended from time to time, and with decisions of the Board of Directors made pursuant to the Declaration, By-Laws and Rules and Regulations. Failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief, or the imposition of a fine, or any of the above, maintainable by the Board in the name of NHA, or in a proper case, by an aggrieved Time Share Owner. In addition to or in conjunction with the foregoing, NHA may deny any Time Share Owner who is delinquent in the payment of Assessments or who has committed an infraction of the Rules and Regulations the use and enjoyment of his Time Share Weeks, as the case may be, until such delinquent assessments are paid for or in the case of an infraction of the Rules and Regulations, for a period

not to exceed seven (7) days. No such denial of use and enjoyment shall entitle any Time Share Owner to any reduction in his Maintenance Fees.

In the event a Time Share Owner fails to maintain a Unit, as required herein, or in the event an Time Share Owner makes any improvements, alterations, additions or repairs in violation of this Declaration, or otherwise violates or threatens to violate the provisions hereof, NHA shall have the right to proceed in a Court of equity for an injunction to enforce compliance with the provisions hereof. NHA also shall have the right to levy a Special Assessment against a Time Share Owner and his Time Share Interest (s), for such sums as may be necessary in order to remove any unauthorized improvements, addition, alteration or repair and to restore the property to good condition and repair. In instances in which such failure, alteration, addition, or other violation is attributable to a Time Share Owner any such levy of a Special Assessment shall be limited to the Time Share Interest owned by said Time Share Owner and shall be of no force and effect as to any other Time Share Owner.

## **Article 21: RIGHT OF ENTRY BY NEPTUNE HOUSE ASSOCIATION**

NHA shall have the irrevocable right, to be reasonably exercised by the Board or its agents, to enter any Unit at any time to inspect the same, to remove violations therefrom and to perform any maintenance, inspection, repair, replacement or construction for which NHA is responsible, and further shall have the irrevocable right, to be reasonably exercised by the Board or its agents, to enter any Unit at any time for the purpose of performing maintenance work or making repairs necessary to prevent injury or damage to other parts of the Condominium, including other Units. Such entry shall be made with as little inconvenience to the Time Share Owner as practicable, except in the case of emergencies when such entry may be immediate regardless of convenience. Any damage caused thereby or expenses in connection therewith shall be repaired or satisfied by NHA as a Common Expense, unless such maintenance, repairs or construction are necessitated by the fault or negligence of the Time Share Owner, in which case the Time Share owner shall bear the expense thereof. Any expense to be paid by the Time Share Owner pursuant to this paragraph shall be payable to NHA upon demand as a Special Assessment.

## **Article 22: INSURANCE**

NHA shall obtain and pay the cost of:

(i)-casualty insurance covering the Unit(s), Common Elements and the Common Furnishings against loss or damage by fire and other hazards customarily covered by casualty insurance policies written with extended coverage ;

(ii)-public liability insurance, insuring against liability for in, on or about the Units; and

(iii)-any other insurance deemed necessary or desirable by the Board of Directors of NHA or as may be required by the Time Share Act. Casualty Insurance shall be in an amount equal to the

maximum insurance replacement value of the Unit(s) and personal property therein (exclusive of land excavations, foundations and other items normally excluded from property policies) without deduction for depreciation as determined annually by the Board of Directors of NHA.

Each insurance policy carried either by NHA shall provide that:

(i)-each Time Share Owner is an insured person under the policy as part of the NHA, as his interest may appear;

(ii)-the insurer waives its right to subrogation under the policy against any Time Share Owner;

(iii)-no act or omission by any Time Share Owner, unless acting within the scope of his authority on behalf of NHA, will void the policy or be a condition to recovery by any other person under the policy; and

(iv)-if, at the time of a loss under the policy, there is other insurance in the name of an Time Share Owner covering the same risk covered by the policy, the policy maintained pursuant to this Article is to be the primary insurance and any other insurance in the name of an Time Share Owner applies only to loss in excess of the primary coverage.

## **Article 23: DAMAGE OR DESTRUCTION**

In the event of any damage or destruction to the Unit(s) or any part thereof, except as otherwise provided in this Declaration, the Board of Directors, acting in its capacity as Insurance Trustee (to which the Board is hereby appointed) shall forthwith cause such damage to be repaired and shall so apply any available insurance proceeds. If the damage is not covered by insurance or if the available insurance proceeds are insufficient, NHA shall assess and the Time Share Owners shall pay the cost thereof or deficiency in proportion to their common expense liability unless the damage was caused by the intentional or negligent act or omission of any Time Share Owner, his family, guests, invitees or lessees, in which event the cost of repair or deficiency (to the extent not covered by insurance proceeds) shall be paid by such Time Share Owner and a lien filed against his Time Share Interest in accordance with the provisions of this Declaration if the amount is not paid within ten (10) days of being submitted a bill by NHA.

Any portion of the Unit(s) damaged or destroyed must be repaired or replaced promptly by NHA unless:

(i)-another person or entity repairs or replaces it; or

(ii)-there is a termination pursuant to the terms hereof; or

(iii)-repair or replacement would be illegal under any state or local health or safety statute or ordinance; or

(iv)-members having at least eighty percent (80%) of the total votes allocated to Time Share Owners vote not be rebuild; or

(v)-a decision not to rebuild the damaged property is made by another person or entity empowered to make that decision.

Any proceeds allocable to the Unit(s) and payable to Time Share Owners therein as the result of

(i)-dissolution or termination of the Condominium or the Time Share Ownership Plan for any reason or as a result of the failure to rebuild,

(ii)-an excess of insurance proceeds over the cost of repair or restoration, or

(iii)-any similar cause, not required to repair or restore the Unit(s) or furnishings or any part thereof or paid to compensate any one or more Time Share Owners for loss or damage to their individual person or property (in which case such distribution shall be with due regard to the loss or damage incurred), shall be held by the Insurance Trustees in trust for the Time Share Owners and lien holders as their interests may appear and shall be distributed to the Time Share Owners in proportion to their respective percentage interest in the Unit.

## **Article 24: REPAIRS TO UNIT(S)**

All repairs and maintenance to the Unit(s) shall be made and performed at such times as may be determined by NHA or the Management Firm. No Time Share Owner shall make any repairs, improvements or decorations nor cause any material to be furnished to the Unit or any labor to be performed therein or thereon or contract so to do. Each Time Share Owner hereby indemnifies and holds harmless all other Time Share Owners against any loss, damage or claim arising out of a breach of the provisions of this Article, including the costs of removing any unauthorized improvements, repairs or alterations and repairing and restoring the Unit to the condition prior to such breach. NHA shall assess the Time Share Owner for all costs arising out of his breach of this provision which shall be payable by said Time Share Owner and enforceable and collectible by NHA in the same manner as the Maintenance Fee.

## **Article 25: AMENDMENT TO TIME SHARE DECLARATION**

Prior to the conveyance of one or more Time Share Interests to a Time Share Owner other than the Declarant, this Declaration may be amended at any time and from time to time by an instrument in writing signed by the Declarant and recorded. Subsequent to the conveyance of seventy-five percent (75%) of the Time Share Interests which may be created this Declaration may be amended only at a Special Meeting, duly called and convened in accordance with the By-Laws for such purpose, by the affirmative vote of a Majority of Members; or, in lieu of such

Special Meeting by an Action by Members Without a Meeting approved and agreed to by a Majority of Members. Provided, however, that:

(i)-no instrument of amendment which alters a Time Share Owner's percentage interest in the Unit or voting rights in NHA shall be of any force or effect unless the same has been approved and agreed to in writing by all the Time Share Owners of record in such Unit and any institutional lenders of record affected thereby;

(ii)-no instrument of amendment which alters the Declaration in any manner which would render any of its provisions contrary to or inconsistent with any applicable law shall be of any force or effect;

(iii)-no instrument of amendment which purports to affect the Declarant's reserved rights of control or development set forth in this Declaration shall be of any force and effect unless it is assented to in writing by the Declarant and recorded with such amendment;

(iv)-no instrument of amendment which would adversely affect the Declarant's right and ability to develop and/or market Time Share Interests as contemplated herein and in the Condominium Documents shall be of any force or effect unless, it is assented to in writing by the Declarant and recorded with such amendment;

(v)-no instrument of amendment shall change any other rights and privileges of the Declarant unless it is assented to in writing by the Declarant and is recorded with such amendment.

No amendment to the Declaration shall become effective until an instrument setting such amendment forth in full, acknowledged by the President and Secretary of NHA shall be recorded. Such instrument, as so executed and recorded, shall be conclusive evidence of the existence of all facts recited therein and of compliance with all prerequisites to the validity of such amendment in favor of all persons who rely thereon without actual knowledge that such facts are not true or such amendment is not valid.

Notwithstanding the above, each Time Share Owner by accepting and recording a deed hereby irrevocably appoints, for a seven (7) year period commencing on the date of the recording of this Declaration or until seventy-five percent (75%) of all Time Share Interests (which for the purposes of this paragraph shall include all Time Share Interests which Declarant has the right to create pursuant to Article 27 hereof) are conveyed to Time Share Owners other than the Declarant, whichever is later, the Board of Directors, acting by or through any member thereof, as his true and lawful attorney-in-fact and agent for the purpose of executing any amendment to this Declaration. The appointment of the Board of Directors as attorney-in-fact is deemed to be a power coupled with an interest, is irrevocable, shall survive the transfer of any Time Share Interest and is binding on any transferee or mortgagee. Provided, however, that all voting by NHA shall be completed in accordance with the Time Share Act and further that the appointment of the Board to execute an Amendment pursuant to this Article shall not impair or derogate from the rights of Time Share Owners, if any, by direct initiative to amend this Declaration pursuant to the Time Share Act. The execution and recording of an amendment to the Declaration for the

purpose of exercising and Development Rights, Special Declarant Rights or Special Developer Rights reserved by the Declarant in the Condominium Documents and as provided in the Time Share Act shall not be deemed an amendment to be governed by the provisions of this Article 25.

## **Article 26: RESERVATION OF RIGHTS AND EASEMENTS**

Notwithstanding anything contained in this Declaration to the contrary, the Declarant hereby reserves the following rights and easements:

(a)-The rights to connect with, make use of, maintain, repair and replace any and all utility lines, pipes, conduits, sewers and drainage lines which may from time to time be located in, upon or under the Unit(s), in order to take such action as Declarant deems necessary or convenient in connection with the construction of any and all additional improvements on, to or under the Condominium or the Unit(s), whether or not any portion of the additional improvements are to be submitted to the Declaration,

(b)-The right, without the consent of any Time Share Owner or of any holder of a mortgage on a Time Share Interest, to amend this Declaration by recording an amendment to this Declaration with such changes as are necessary or desirable:

(i)-to add Additional Units to the Time Share Ownership Plan pursuant to Article 27 hereof;

(ii)-to exercise Declarant's rights as set forth in this Declaration and in the Condominium Documents; and

(iii)-satisfy the provisions of this Declaration.

(c)-The right to grant or reserve in. the future, without the consent of any Time Share Owner or holder of a mortgage on an Time Share Interest, such other rights, easements or restrictions on, over across, through and/or under the Condominium or Unit(s), which the Declarant deems necessary, appropriate or advisable in connection with the development of the Condominium and/or Unit(s), provided only that such grants or reservations do not materially adversely interfere with the use of Time Share Interests for their intended purposes.

(d)-Subject to the provisions of Article 29(m), the right to use any Unit as a model for display, for purposes of sale or leasing of Time Share Interests, and to transact any other business in the Unit(s) to achieve the foregoing.

The rights and easements referred to herein may be freely sold, granted, assigned, mortgaged or otherwise transferred by the Declarant, by deed, mortgage, other written instrument. All present and future Time Share Owners, and all persons now or hereafter claiming an interest in a Time Share Interest, by, through or under a Time Share Owner, including, without limitation, all

holders of mortgages on Time Share Interests shall be subject to and bound by the provisions of this Article 26.

The rights and easements reserved by the Declarant in this Article 26 shall be in addition to and not in limitation of, the rights and easements reserved by the Declarant in other Articles of this Declaration and the Condominium Documents.

## **Article 27: ADDITIONAL PHASES: AMENDMENT TO TIME SHARE DECLARATION**

It presently is contemplated that the Declarant will construct Additional Units in the Condominium and submit in phases all or some of such Additional Units to this Declaration and the Time Share Ownership Plan.

The Declarant hereby reserves the right for itself, its successors and assigns, without the consent of any Time Share Owner or the holder of any mortgage on an Time Share Interest, pursuant to and in accordance with the provisions of this Article 27, to amend this Declaration at any time or from time to time, to submit such Additional Units to this Declaration and the Time Share Ownership Plan by the recording of amendments hereto.

In addition, the Declarant hereby reserves the right for itself, its successors and assigns, without the consent of any Time Share Owner or the holder of any mortgage of a Time Share Interest, pursuant to and in accordance with this Article 27, to alter, as reasonably determined in its sole discretion, the Time Share Ownership Plan as presently constituted in order to design and implement a different format or scheme for the use, occupancy and enjoyment of Additional Units in subsequent Phases. Provided, however, that any such alteration shall be described and set forth in any amendment to this Declaration creating the Additional Units and that such alteration shall not apply to any portion of the Unit(s) previously submitted to the Declaration and the Time Share Ownership Plan.

Upon the recording of any such amendment, the Additional Units and the elements, features and facilities designated as Common Areas in the Condominium Documents, shall become subject to this Declaration and become a part of the Time Share Ownership Plan as if included and described in this original Declaration.

By the acceptance of a deed to a Time Share Interest, each Time Share Owner and the holder of any mortgage on that Time Share Interest, shall have thereby consented to any such amendment, without the Declarant being required to obtain any further consent or the execution of any documents by such Time Share Owner.

In the event the Declarant elects to add Additional Units to the Time Share Ownership Plan, the total number of Time Share Interests which can be created shall not in the aggregate exceed 988.



Nothing contained in this Declaration shall be deemed to restrict the rights of the Declarant to construct additional buildings and/or to submit Additional Units to this Declaration of any architectural design, size and layout. Provided, however, that Declarant shall use reasonable efforts to design Additional Units so as to not detract from the quality and architectural and other aesthetic features of the Unit(s), all such determination to be within the reasonable discretion of the Declarant.

Notwithstanding anything contained herein to the contrary, and in addition to all other reservations of the Declarant in this Declaration and the Condominium Documents, the Declarant hereby reserves and shall have the right, without the consent of any Time Share Owner or of the holder of a mortgage on any Time Share Interest, to develop and construct on the Condominium land additional buildings and improvements including without limitation, roads, driveways, parking areas, utilities and all other improvements and amenities as may be determined to be necessary or desirable by the Declarant and to grant easements across, under, over and through the Unit(s) and the Condominium and or any portion thereof which the Declarant deems necessary for or convenient to the development of the Condominium, the Unit(s) and the rights reserved herein. In addition, Declarant hereby expressly reserves and shall have the right to make such use of the Unit(s) as may be reasonably necessary or convenient to enable Declarant to develop the Condominium and the Unit(s) pursuant to the rights reserved herein. Provided, however, that nothing contained herein shall be deemed to obligate the Declarant to commence or complete construction of other improvements of any type or nature within the Condominium nor shall anything be deemed to obligate the Declarant to submit any Additional Units to the Declaration and Time Share Ownership Plan. Neither is the Declarant required if it elects to submit Additional Units to the Declaration, to do so in any particular sequence or order.

The Declarant shall not amend this Declaration to submit Additional Units until such time as the Additional Units have been sufficiently completed so as to comply with the provisions of the Time Share Act.

The rights of the Declarant reserved herein to submit Additional Units to the Declaration and the Time Share Ownership Plan shall terminate and be of no force and effect on the first to occur of the following:

(i)-seven (7) years from the date hereof; or

(ii)-such time as the Declarant has recorded a written instrument wherein the Declarant expressly waives and releases the rights and easements reserved in this Declaration to add additional phases to the Declaration; or

(iii)-the inclusion in the Unit(s) of the maximum number of Time Share Interests permitted hereunder.

## **Article 28: APPLICATION**

The provisions of this Declaration, the By-Laws and the Rules and Regulations shall be binding upon all parties having or acquiring any right, title or interest in a Unit including mortgagees, lessees and occupants of the Unit and their employees and any other persons who may use or be in the Unit for any purpose or any manner and shall be for the benefit of each Time Share Owner and his heirs, successors and assigns.

Each Time Share Owner (including Declarant) shall be fully discharged and relieved of liability for the obligation imposed hereunder insofar as the same relates to each Time Share Interest and paying all sums and performing all obligations hereunder in respect of such Time Share Interest at the time his ownership interest is terminated, through conveyance, or otherwise, the acceptance of a deed, or the act of occupancy of the Unit shall constitute an agreement that the Rules and Regulations of both NHA and the Management Firm, the By-Laws of NHA and this Declaration and all other Condominium Documents, as the same may be amended from time to time, are accepted and ratified and will be binding upon the recipient thereof.

## **Article 29: MISCELLANEOUS PROVISIONS**

### **A. LEASING**

Time Share Owners who do not wish to occupy the Unit reserved for them are free to lease that Unit for their designated week-whether Fixed or Flexible, without penalty or prior approval being required. Time Share Owners desiring to lease such Units must make arrangements for the rental of their Unit themselves. To the extent that the Management Firm agrees to contract with such owners to act as their agents for the rental of such Units, Time Share Owners may avail themselves of the services of the Management Firm upon such terms and conditions as are mutually agreed upon in writing by the Time Share Owner and the Management Firm. The terms and conditions of such rental are within the discretion of the Time Share Owner. There will be no centralized rental agreement, rental pool or sharing of income derived from the use of the Units by transient hotel guests or by lessees of Time Share Owners. Any income derived from the rental of a Unit by a Time Share Owner, subject to commissions or other charges payable to the Management Firm or other rental agent, shall accrue solely to the benefit of the Time Share Owner who has rented the Unit reserved for his use.

### **B. RULES AND REGULATIONS**

The Board of Directors shall have the power and authority to adopt and amend, from time to time, reasonable Rules and Regulations. A copy of the Rules and Regulations shall be available for inspection in a reasonable place and shall be furnished to each Time Share Owner upon request.

### **C. MAINTENANCE FEE**

No Time Share Owner may exempt himself from liability for his Maintenance Fee, by waiver of the use and enjoyment of any of his Time Share Interest or by the abandonment of his right to use Time Share Week(s).

### **D. PARTIAL INVALIDITY**

All provisions of this Declaration shall be deemed severable and any unlawful provisions thereof shall be void, but no such partial invalidity shall impair or affect in any manner the validity or enforceability of the balance of this Declaration which shall remain in full force and effect.

### **E. NO WARRANTY**

The Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Unit(s), except as specifically set forth herein or in the Public Offering Statement, Time Share Act and no person shall rely upon any warranty or representation not so specifically made herein unless otherwise stated. Maintenance Fees, taxes or other charges are estimated only and no warranty or representation with respect thereto is made or intended, nor may one be relied upon.

### **F. GENDER, Etc.**

Whenever the context so requires, the use of any gender shall be deemed to include all genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

### **G. CAPTIONS**

The captions used in this Declaration 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 provision of this Declaration.

### **H. WAIVER**

The failure by the Board of Directors to insist, in any instance, upon the strict performance of any of the terms, covenants, conditions or restrictions of the Declaration, the By-Laws or the Rules and Regulations, or to exercise any right herein or therein contained, or to serve any notice, or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition, restriction or right, which shall remain in full force and effect thereafter. The receipt by the Board of any payment of a Maintenance Fee or other payment from any Time Share Owner with knowledge of a breach by such Time Share Owner of any term, covenant, condition or restriction hereof shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by a majority of the members of the Board.

## **I. NOTICES**

Except as otherwise specified herein all notices to NHA and the Board of Directors shall be delivered or sent by mail to the Board of Directors, Neptune House Condominium, P.O. Box 100, Block Island, Rhode Island 02807, or to such other address as the Board may designate from time to time by notice in writing to all Time Share Owners. All notices to Time Share Owners shall be deemed to have been properly sent when mailed postage prepaid, to the last known address of the person who appears as Time Share Owner on the records of NHA.

## **J. INTERPRETATION**

It is specifically intended that this Declaration is intended to assure the fair and harmonious operation and care of the Unit(s), for the benefit of each and all of the Time Share Owners thereof, therefore, this Declaration is to be liberally construed to effectuate its purpose of creating a uniform occupancy plan for the beneficial use and enjoyment of the Unit(s). This Declaration shall not constitute a joint venture or partnership and no party or Time Share Owner shall have the right to participate in the individual profits, if any, of any other party or Time Share Owner arising out of the use and occupancy of the Unit(s).

## **K. GOVERNING LAW**

This Declaration shall be governed by the laws of the State of Rhode Island.

## **L. COMMON FURNISHINGS**

All Common Furnishings shall be the sole and exclusive property of the NHA (except that certain furnishings may be leased), and the Time Share Owner shall have no claim to or interest therein except as may be appurtenant to his Time Share Interest. NHA shall have the exclusive right to repair, renovate and replace all such Common Furnishings at such time and in such manner as it shall deem appropriate.

## **M. ADMINISTRATIVE OFFICES, MODELS AND SIGNS**

Until such time as the Declarant ceases to own any Time Share Interest, the Declarant shall have the right to maintain an administrative offices in one or more Units for the purpose of effectuating the sale of Time Share Interests to Time Share Owners and, in addition, Declarant shall have the right to affix signs to the Unit(s) advertising the sale, rental and use of the Unit(s). In addition the Declarant hereby reserves to itself and to its successors and assigns all Special Developer Rights as are now or may at any time in the future be allowed under the Time Share Act.

## **Article 30: SERVICE OF PROCESS**

The President of the NHA, Neptune House Condominium, P.O. Box 100, Block Island, Rhode Island, is hereby appointed to receive service of process on behalf of the Association.

**IN WITNESS WHEREOF**, NEPTUNE REALTY CORP. has caused this Time Share Declaration to be executed under seal this 31st day of December, 1985.

NEPTUNE REALTY CORP.

By: S/ VJM

Vincent J. McAloon, President

STATE OF RHODE ISLAND COUNTY OF WASHINGTON

In the Town of New Shoreham in said County and State, on this 31st day of December , 1985, before me personally appeared the above-named Vincent J. McAloon to me known and known by me to be the President of Neptune Realty Corp., the party executing the foregoing instrument, and acknowledged said instrument, to be his free act in his said capacity and deed and the free act and deed of said Neptune Realty Corp.

S/ FJB

Notary Public

Print Name: Frederick J. Benson

My Commission Expires: June, 1986

## **Exhibit A: By-Laws of NHA**

See Exhibit 2 of Public Offering Statement: [By-Laws of NHA](#)

## **Exhibit B: Time Share Week Calendar**

### **DESCRIPTION OF TIME SHARE WEEKS**

The annual use period for each Time Share Week shall be seven (7) days commencing on Saturday at 4:00 p.m., and ending on the next immediate Saturday at 12:00 noon.

**NOTE:** For purposes of determining the sequence of Fixed and Flexible Weeks within any calendar year those weeks beginning the Saturday before Christmas and New Year's Day on any year shall be deemed to be Fixed Weeks and the weeks following shall be designated according to the sequence specified above.