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DECLARATION BK 526 PG 0025  
For Gulf Stream Condominiums

CREATING UNIT OWNERSHIP  
AND ESTABLISHING BY-LAWS, RESTRICTIONS,  
COVENANTS AND CONDITIONS

FILED

APR 15 1987

RECORDED

THIS DECLARATION and the exhibits which are attached hereto and made a part hereof by this reference, are made and executed this 15th day of April 1987, by KDH ASSOCIATES, a Virginia Partnership, hereinafter called the "Declarant", for itself, its successors, grantees, and assigns, pursuant to the provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

ARTICLE I

STATEMENT OF SUBMISSION

Section 1.1 Submission of Property

KDH Associates, a Virginia General Partnership ("Declarant"), is the owner in fee simple of certain real property situated in the Town of Kill Devil Hills, Dare County, North Carolina and more particularly described in Exhibit A, which Exhibit A is attached hereto and incorporated herein by reference. It is the intention of the Declarant to submit by this Declaration that property described in Exhibit A together with all improvements, easements, rights and appurtenances thereunto belonging ("Property") in accordance with Chapter 47C of the General Statutes of North Carolina, entitled North Carolina Condominium Act (hereinafter referred to as the "Act") thereby creating a Condominium known as GULF STREAM CONDOMINIUMS. The Declarant pursuant to the Act will establish a plan of condominium ownership for GULF STREAM CONDOMINIUMS and will divide the Property into eight (8) units and does hereby designate all such units for separate ownership. Declarant shall sell and convey condominium units to purchasers subject to the covenants, conditions, obligations, and restrictions herein reserved.

NOW, THEREFORE, Declarant does hereby publish and declare that all the Property described in Exhibit A subject to this Declaration is held, and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved, subject to the following restrictions, covenants, conditions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of the place for the improvement of such Property and the division thereof into condominium units, and shall be deemed to run with the land, shall be a burden and benefit to the Declarant, its successors and assigns and any person acquiring and owning an interest in the real property and improvements, their grantees, successors, heirs, administrators, devisees and assigns. Every grantee of any interest in such property by the acceptance of a deed or other conveyance of such interest, whether or not such deed or other conveyance of such interest shall be signed by the grantee or whether or not such person shall otherwise consent in writing, shall take subject to provisions of the "Act," and shall be deemed to have assented to the same.

Section 1.2 Name

The Property shall be known as the GULF STREAM CONDOMINIUMS.

Section 1.3 Condominium Ordinances

The Condominium is not subject to any code, real estate use law, ordinance, charter provision, or regulation (i) prohibiting the condominium form of ownership, or (ii) imposing conditions or requirements upon developments under a different form of ownership. This statement is made pursuant to Section 47C-1-106 of the Act for the purpose of providing marketable title to the units in the Condominium.

Section 1.4 Alterations of Units

Subject to Article IX of the By-Laws, a unit may be altered pursuant to the provisions of Section 47C-2-113(a) and (b) of the Act.

Section 1.5 Limited Common Elements

The Limited Common Elements serving or designed to serve each unit are hereby allocated solely and exclusively to each such unit. The Limited Common Elements are defined in Section 2.1(12) further described in Section 4.3.

Section 1.6 Unit Allocations

The allocations to each unit of a percentage of undivided interest in the Common Elements, of votes in the Association, and of a percentage of the common expenses, are as stated in Section 6.1.

Section 1.7 Encumbrances

The liens, defects and encumbrances on the Property to which the rights of Unit Owners and occupants are hereby made subject are set out on Exhibit D.

ARTICLE II

DEFINITIONS

Section 2.1 Defined Terms

As provided in Section 47C-1-103 of the North Carolina Condominium Act, terms that are not otherwise defined herein shall have the meaning provided therein. The following words, when used in this Declaration shall have the following meanings:

1. "Allocated Interests" means the undivided interests in the Common Elements, the common expense liability, and votes in the Association allocated to each unit.
2. "Assessment" means an Owner's share of the common expenses assessed against such Owner and his unit from time to time by the GULF STREAM CONDOMINIUMS, in the manner hereinafter provided.
3. "Board" or Board of Directors" means the Board of Directors of the GULF STREAM HOMEOWNERS ASSOCIATION, INC., a corporation not for profit under the laws of the State of North Carolina, created hereunder the "Director" or "Directors" means a member or members of the Board.
4. "By-Laws" means the By-Laws for the administration of the GULF STREAM CONDOMINIUMS, contained in Exhibit C, attached hereto and made a part hereof by this reference.
5. "Common Elements" means all portions of a condominium other than the units.
6. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
7. "Common Expense Liability" means the liability for common expenses allocated to each unit pursuant to Section 47C-2-107.
8. "Condominiums" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the portions.

9. "Declarant" means KDH ASSOCIATES, a Virginia General Partnership or its successors in interest.

10. "Declaration" means this Declaration Creating Unit Ownership and Establishing By-Laws with Covenants, Conditions and Restrictions for GULF STREAM HOMEOWNERS ASSOCIATION, INC.

11. "Limited Common Elements" means a portion of the Common Elements allocated by the Declaration or by operation of Section 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units.

12. "Limited Common Expenses" means expenses separately assessed against more than one but less than all the condominium units generally in accordance with use and said services.

13. "Member" means a Unit Owner.

14. "Mortgage" means any deed of trust, mortgage, security agreement, and financing statement of any and all other similar instruments given to secure the payment of a debt, by granting a security interest in a unit, its fixtures or contents.

15. "Mortgagee" means any secured party under a security agreement or mortgage, and the beneficiary under or a holder of a deed of trust.

16. "Percentage Interest" means the percentage of undivided interest each Owner owns in the common areas and facilities as set forth in Section 6.1 of Article VI of this Declaration.

17. "Person" means any individual, corporation, partnership, association, trustee, fiduciary, or other legal entity, and shall mean the plural or combination of the same where applicable.

18. "Plans" means the plans of the building, units and site plan as set forth by \_\_\_\_\_ dated \_\_\_\_\_, 1987 consisting of \_\_\_\_\_ pages and filed in Unit Ownership Book 3, Sheets \_\_\_\_\_, Dare County Registry.

19. "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to Section 47C-2-105(a)(5).

20. "Unit Boundaries" the boundaries of each unit, both as to the vertical and horizontal planes, as shown on the floor plans, are the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the unit, the undecorated surfaces of the ceiling facing the interior of the unit, and the topmost surfaces of the subflooring, and include the decoration on all such interior panelling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries.

21. "Unit Owner" means a Declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the Condominium, but does not include a person having an interest in a unit solely as security for an obligation.

22. "Unit Owners Association" means GULF STREAM HOMEOWNERS ASSOCIATION, INC., a non-profit organization organized under Chapter 55A of the North Carolina General Statutes.

## ARTICLE III

## BUILDINGS ON THE LAND AND UNIT BOUNDARIES

Section 3.1 Location and Dimensions of the Building

The location and dimensions of the building on the Land for Phase I are depicted on the site plat prepared by \_\_\_\_\_ dated \_\_\_\_\_, 1987, said plat being the first page of \_\_\_\_\_ pages filed in Unit Ownership Book 3, Sheets \_\_\_\_\_ - \_\_\_\_\_, Dare County Registry which site plan is hereby incorporated herein by reference thereto.

Section 3.2 Brief Description of Buildings and Improvements

GULF STREAM CONDOMINIUMS shall contain one building of six (6) condominium units and one (1) structure of two (2) townhouse style units for a total of eight (8) units.

Section 3.3 Location of Units

The location of units within the building and their dimensions are shown on the "plans," as set forth by \_\_\_\_\_ dated \_\_\_\_\_, 1987 consisting of \_\_\_\_\_ pages and filed in Unit Ownership Book 3, Sheets \_\_\_\_\_ - \_\_\_\_\_, Dare County Registry which plans are hereby incorporated herein by reference. All units, their identifying numbers, location, and type are fully depicted on the plats and plans of the aforereferenced. The "size" of each unit is the total number of square feet contained therein determined by reference to the dimensions shown on the plats and plans to which reference should be made for a more particular description. A brief description of the units, their location and size is as follows:

- Unit 100 Located on the north side (oceanfront) first level, one story containing approximately 1621 sq. ft. This unit has a living and dining area, kitchen, two baths, two bedrooms, den, a deck and balcony.
- Unit 101 Located on the south side (oceanfront) first level, one story containing approximately 1621 sq. ft. This unit has a living and dining area, kitchen, two baths, two bedrooms, den, a deck and balcony.
- Unit 102 Located on the north side (oceanview) first and second level, two stories containing approximately 1560 sq. ft. This unit has a living and dining area, kitchen, 3 baths, utility room, two bedrooms, den, and a balcony.
- Unit 103 Located on the south side (oceanview) first and second level, two stories containing approximately 1560 sq. ft. This unit has a living and dining area, kitchen, 3 baths, utility room, two bedrooms, den, and a balcony.
- Unit 200 Located on the north side (oceanfront) second level, one story containing approximately 1621 sq. ft. This unit has a living and dining area, kitchen, two baths, two bedrooms, den, a deck and balcony.
- Unit 201 Located on the south side (oceanfront) second level, one story containing approximately 1621 sq. ft. This unit has a living and dining area, kitchen, two baths, two bedrooms, den, a deck and balcony.

Unit 300 Located on the north side (oceanfront) third level, one story containing approximately 1621 sq. ft. This unit has a living and dining area, kitchen, two baths, two bedrooms, den, a deck and balcony.

Unit 301 Located on the south side (oceanfront) third level, one story containing approximately 1621 sq. ft. this unit has a living and dining area, kitchen, two baths, two bedrooms, den, a deck and balcony.

#### Section 3.4 Unit Boundaries

Each unit shall include all the space within the boundaries thereof and all those items set forth in Section 47C-2-102 of the North Carolina Condominium Act. A more particular description of the unit boundaries are as follows:

Each unit is bounded as to the horizontal boundaries by the unexposed facing of drywall applied to the 2" x 4" stud walls either common to an adjacent unit or on the exterior of the unit. Units 100 and 101 are bounded on a vertical plane by the unexposed face of the 3/4" tongue and groove plywood sub-floor to the unexposed facing of the drywall on the ceilings. Units 200 and 201 are bounded on a vertical plane by the unexposed face of the 3/4" tongue and groove plywood sub-floor to the unexposed face of the drywall on the ceilings where there is another unit located above. Units 300 and 301 are bounded on a vertical plane by the unexposed side of the 3/4" tongue and groove plywood sub-floor to the exposed side of the roof rafter where the ceilings are. Units 100, 101, 200, 201, 300, 301 also have private decks and balconies that are bounded as to the horizontal boundaries on the north, south and east by the exposed face of channel rustic siding on the east by the eastern side of the handrail system. The private decks are bounded on the vertical plane from the top side of the floor joist below to the bottom side of the floor joist above, except that the private deck for Units 300 and 301 does not have a floor joist above, and is open.

#### Section 3.5 Units as Built

For a more particular description of the units as built, see that filing of the Unit Ownership Act, Book 3, Sheets \_\_\_\_\_, Dare County Registry, North Carolina, which description is controlling over any discrepancies with the units as described herein.

#### Section 3.6 Maintenance Responsibilities

Notwithstanding the ownership of the various portions of the Common Elements and the units by virtue of the foregoing boundary description, the provisions of the By-Laws shall govern the division of maintenance and repair responsibilities between the Unit Owner and the Association.

#### Section 3.7 Relocation of Unit Boundaries and Subdivision of Units

Relocation of boundaries between units and subdivision of units is permitted subject to compliance with the provisions of Article IX of the By-Laws and Section 47C-2-112(a) & (b) of the North Carolina Condominium Act.

## ARTICLE IV

## COMMON ELEMENTS

Section 4.1 Location of Common Elements

Locations of the Common Elements to which each unit has direct access are shown on the plat and plans; pursuant to Section 47C-2-109(b) of the Condominium Act and include parking, deck and walkway to the ocean, dumpster and septic tank system.

Section 4.2 Use of Common Elements

Each Unit Owner shall have the right to the Common Elements in accordance with the purpose for which they are intended without hindering the exercise of or encroaching upon the rights of other Unit Owners. The Board shall, if any question arises, determine the purpose for which a part of the Common Elements is intended for use. The Board shall have the right to promulgate rules and regulations limiting the use of Common Elements to Unit Owners and their guests as well as provide for the exclusive use of a part of the Common Elements by a Unit Owner and his guests for special occasions, which exclusive use may be conditioned upon, among other things, payment of a fee. Any Unit Owner may delegate, in accordance with the provisions of this Declaration and By-Laws and reasonable rules and regulations of the Board, his right to use Common Elements to the immediate members of his family living in the unit, to a limited number of guests or to tenants who reside in his condominium unit.

Section 4.3 Limited Common Elements

Ownership of a unit shall entitle the Owner thereof to the exclusive use or use with others necessarily served thereby of the Limited Common Elements appurtenant to such unit and so designated in the plans. Limited Common Elements shall not be construed or interpreted to be separate and apart from the Common Elements in general, being limited only with respect to the reserved use thereof by the unit or units served. Limited Common Elements shall include, if appropriate, all balconies, patios (concrete slabs), entrance areas, any lighting facilities, equipment and wiring installed to illuminate the general Common Elements exclusive of any individual unit electric meter, all masonry walls, storage units, and any area designated on the plans as a Limited Element, or set out by the Board of Directors as a Limited Element for a unit.

Exclusive use of the Limited Common Elements may be delegated by an Owner to the immediate members of his family, his guests, or tenants who reside in his unit. Owners may place plants, furniture, or other similar items within the Limited Common Elements adjacent or appurtenant to the unit, subject to reasonable rules and regulations duly adopted by the Board with respect thereto. No Owner shall build or construct any type storage or workshop facility or similar type of structure within the Limited Common Elements unless prior approval is obtained from the Board of Directors.

Section 4.4 Additional Limited Common Elements

The Board shall have the right to approve, from time to time, changes in existing Limited Common Elements, to approve additional or new Limited Common Elements; provided, that such additional Limited Common Elements shall be immediately adjacent to the unit to which it shall appertain.

## ARTICLE V

## EASEMENTS

Section 5.1 Use and Enjoyment

Every Unit Owner, his family living in his unit, his tenants, and permitted guests, shall have a right and easement of use and enjoyment in and to the Common Elements, (including the right of access, ingress, and egress to and from his unit over those portions of the property designated for such purposes), and such easement shall be appurtenant to and shall pass with the title to every unit, subject to the following provision;

(a) The right of the Board of Directors to control the use and enjoyment thereof as provided in this Declaration, and in the duly-adopted Rules and Regulations of the Association, which shall include, but not be limited to, the right of the Board to limit use and enjoyment thereof to the Unit Owners, and their respective families living in the unit, tenants, and guests, as well as provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by a Unit Owner, his family, tenants, and guests:

(b) The right of the Board of Directors to limit the number of guests of Unit Owners; and

(c) The right of the Board to suspend the voting rights and rights to use of the recreational facilities by a Unit Owner, his tenants and guests, for any period of time during which an assessment against his unit remains unpaid or any separate charge incurred by such Unit Owner for use of the recreational facilities remains unpaid, or for infraction of its published Rules and Regulations.

Section 5.2 Maintenance and Repair

There shall be an easement through the units and the Common Elements for the installation, maintenance, repair and replacement of units and the Common Elements. Use of this easement shall be only during normal business hours, except that access may be had at any time in the case of emergency.

Section 5.3 Structural Support

Every portion of a unit or the Common Elements which contributes to the structural support of another unit shall be burdened with an easement of structural support.

Section 5.4 Encroachments

An easement for encroachment shall be granted pursuant to the provisions of Section 47C-2-114 of the Condominium Act.

Section 5.5 Utilities

There shall be a general easement upon, across, above and under all the property for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, the construction, operation and maintenance of all utility lines, pipes, sewerage line, septic tanks, waste treatment facilities, pumps, drain lines, and facilities related thereto, water, telephone, electricity, cable television, which said shall inure to the benefit of all Unit Owners. Should any party furnishing any service covered by this general easement require a specific easement by separate, recordable document, Declarant, or the Board of Directors of GULF STREAM HOMEOWNERS ASSOCIATION, INC., as the case may be, shall have the right to grant such easement under the terms hereof.

### Section 5.6 Easement to Facilitate Sales

Declarant reserves the right to use any units owned by Declarant as models, management offices or sales offices until such time as Declarant conveys the title thereto to Unit Owners. Declarant reserves the right to relocate the same from time to time within the Property; upon relocation or sale of a model, management office or sales office, the furnishings thereof may be removed. Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of Declarant.

### Section 5.7 Declarants' Right to Grant Easements

The Declarant shall have the right, prior to the termination of the Declarant Control Period, to grant and reserve easements and rights-of-way through, under, over and across the property shown on Exhibit A for construction purposes and for the installation, maintenance and inspection of the lines and appurtenances of public water, sewer, drainage, electricity, telephone, cable television, and other utilities. Declarant also reserves the right, prior to the termination of the Declarant Control Period to grant and reserve any other easements and rights-of-way required to facilitate sharing of services between the Condominium and any portion of the Property not then part of the Condominium; provided, however, that the Owners of such other portions bear a pro-rata share of the cost thereof in proportion to the relative number of dwelling units on such portion and on the Condominium.

## ARTICLE VI

### ALLOCATION OF COMMON ELEMENTS, COMMON INTERESTS, COMMON VOTES AND COMMON EXPENSE LIABILITIES

#### Section 6.1 Allocation of Common Elements, Common Interests, Common Votes and Common Expense Liabilities

The allocations to each unit of a percentage of undivided interest in the Common Elements, of a percentage of the common expenses, and of votes in GULF STREAM HOMEOWNERS ASSOCIATION, INC. are as hereinafter set forth:

<u>Unit No.</u>	<u>Percentage of Undivided Interest In Common Elements</u>	<u>Percentage Of Common Expenses</u>	<u>Votes In Association</u>
100	1/8th	1/8th	1
101	1/8th	1/8th	1
102	1/8th	1/8th	1
103	1/8th	1/8th	1
200	1/8th	1/8th	1
201	1/8th	1/8th	1
300	1/8th	1/8th	1
301	1/8th	1/8th	1
			<u>Total = 8 Votes</u>

#### Section 6.2 Formula Used to Establish Allocations

The allocation of undivided interest in the Common Elements and of the common expenses is according to that percentage of votes given in the Association. The votes in GULF STREAM HOMEOWNERS ASSOCIATION, INC. are equally allocated to all units.



## ARTICLE VII

ADMINISTRATION OF THE CONDOMINIUM BY  
GULF STREAM HOMEOWNERS ASSOCIATION, INC.

To efficiently and effectively provide for the administration of GULF STREAM CONDOMINIUMS by the owners, the condominium units, a non-profit North Carolina Corporation known as and designated as GULF STREAM HOMEOWNERS ASSOCIATION, INC., has been organized, and said Corporation shall administer the operation and management of GULF STREAM CONDOMINIUMS and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and By-Laws. A true copy of these Articles of Incorporation and By-Laws are annexed hereto and expressly made a part hereof as Exhibits B and C, respectively, which documents are incorporated herein by reference as if fully set out word for word. Including but not limited to all matters concerning the Units Owners Association, the Board of Directors, the Officers, the office of GULF STREAM CONDOMINIUMS, including the termination of common expenses and assessments against Unit Owners, payment of common expenses, collection of assessments, statement of common expenses, maintenance, repair, replacement, and other common expenses, additions, alteration or improvements by the Board of Directors and Unit Owners, restrictions on use of units; rules and regulations, rights of access, utility charges, parking spaces, all matters of insurance, all matters relating to repair and reconstruction after fire or other casualty, all mortgages, and rights of mortgagees; matters of compliance and default; and amendments to By-Laws are all set forth within the By-Laws and attached hereto in Exhibit C.

The Owner or Owners of each condominium unit shall automatically become members of said Association upon his, their or its acquisition of an ownership interest in title to any condominium unit and its appurtenant undivided interest in common property, and the membership of such Owner or Owners shall terminate automatically upon such Owner or Owners being divested of such ownership interest and the title to such condominium unit, regardless of the means by which such ownership shall be divested. The person, firm or corporation holding the lien, mortgage or other encumbrance upon any condominium unit shall be entitled by virtue of such lien, mortgage or other encumbrance to membership in said Corporation or to any of the rights or privileges of such membership. In the administration of the operation and management of GULF STREAM HOMEOWNERS ASSOCIATION, INC., shall have and is hereby granted the authority and power to enforce provisions of this Declaration of Condominium and specifically to levy and to collect assessments in the manner and provisions as stated under "Operation of the Property" in Article VII of the By-Laws as stated in Exhibit C, and to adopt, promulgate and enforce such rules and regulations governing the use of the condominium units and common property as Board of Directors of said Association may deem to be in the best interest of the Association.

ARTICLE VIII  
RIGHTS OF FIRST MORTGAGEES;  
VA, FNMA AND FHLMC PROVISIONS

The following provisions shall take precedence over all other provisions of this Declaration and the By-Laws:

Section 8.1 Amendments

Any amendments to this Declaration or to the By-Laws shall be subject to prior approval of their elective representative of the majority of the holders first mortgage position.

Any amendments to this Declaration or to the By-Laws during the Declarant Control Period excepting that Supplementary Declaration for the purpose of adding Phase II shall be subject

to the prior approval of the elected representative of a majority of the holders of first mortgage position FNMA/FHLMC secured loans provided, however, that, if said representative or such lender(s) fails to respond to a written request for approval within thirty (30) days of said request, approval shall be deemed to have been given.

**Section 8.2 Availability of Condominium Documents, Books, Records and Financial Statements**

The Association shall, upon request and during normal business hours, make available for inspection by Unit Owners and the first mortgagees and the insurers and guarantors of a first mortgage on any unit, current copies of the Declaration, the By-Laws, other rules and regulations governing the Condominium and the books, records and financial statements of the Association. The Association shall provide an audited financial statement for the preceding fiscal year if requested in writing by a first mortgagee or insurer or guarantor of a first mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of units, current copies of the Declaration, By-Laws, other rules and regulations governing the Condominium, and the most recent annual audited financial statement (if one is prepared).

**Section 8.3 Successors Personal Obligation for Delinquent Assessments**

The personal obligation for assessments which are delinquent at the time of transfer of a unit shall not pass to the successors in title or interest to said unit unless said delinquent assessments are expressly assumed by them.

**Section 8.4 Rights of Action**

The Association and any aggrieved Unit Owner shall have a right of action against the Association for failure to comply with the regulations, and decisions of the Association made pursuant to authority granted to the Association in this Declaration and the By-Laws.

**Section 8.5 Management and Other Agreements**

Any management agreement between the Declarant or the Association and a professional manager or any other agreement providing for services of the developer, sponsor, builder or Declarant shall be terminable by either party thereto without cause and without payment of a termination fee upon not more than thirty (30) days prior written notice and shall not exceed a term of three (3) years, subject to renewal by the consent of both parties.

**Section 8.6 Right of First Refusal**

The right of a Unit Owner to sell, transfer, mortgage or otherwise convey his interest in his unit shall not be subject to any right of first refusal.

**Section 8.7 Consent of First Mortgagees**

This Section 8.7 shall be effective only if, at the time this Section would apply, at least one unit is subject to financing. Any decision to terminate the Condominium for reasons other than substantial destruction or condemnation of the property shall require the prior written consent of eligible mortgage holders, as defined in Section 8.9 hereof, representing at least 67% of the votes allocated to units subject to first mortgages held by eligible mortgage holders, or such greater requirements specified by the Act. Except for any amendment to the Declaration made for the purpose of adding any of the

additional real estate to the Condominium in accordance with the provisions hereof, any amendment to the Declaration or By-Laws which changes any of the following shall require the prior written consent of Unit Owners holding at least 67% of the total votes in the Association and of eligible mortgage holders representing at least 51% of the votes allocated to units subject to first mortgages held by eligible mortgage holders, or such greater requirements specified by the Act or hereunder:

- (a) voting rights;
- (b) assessments, assessment liens or subordination of such liens;
- (c) reserves for maintenance, repair and replacement of Common Elements;
- (d) reallocation of interests in the Common Elements or limited Common Elements or rights to their use;
- (e) boundaries of any unit;
- (f) convertibility of units into Common Elements or Common Elements into units;
- (g) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (h) insurance or fidelity bonds;
- (i) leasing of units;
- (j) imposition of any restrictions on a Unit Owner's right to sell, transfer or otherwise convey his unit;
- (k) a decision by the Association to establish self-management when professional management had been required previously by any eligible mortgage holder;
- (m) restoration or repair of the Condominium (after damage or destruction or partial condemnation) in a manner other than that specified in this Declaration or the By-Laws;
- (n) any action to terminate the legal status of the Condominium after substantial damage or destruction or condemnation; or
- (o) any provisions that expressly benefit first mortgages or insurers or guarantors of first mortgages.

Section 8.8 Consent of First Mortgages or Unit Owners

This Section 8.8 shall be effective only if, at the time this Section would apply, at least one unit is subject to 66 2/3% of the votes allocated to first mortgages holding at least 66 2/3% of the votes per unit (except first mortgages having one vote per unit financed), or such higher percentage as is required by law, of the first mortgages (based upon one vote for each first mortgage owned) and Unit Owners (other than a Declarant) holding at least 66 2/3% of the total votes in the Association have given their prior written approval, or such greater requirements specified in the Act or hereunder have been satisfied, the Association shall not be entitled to:

- (a) by act or omission, seek to abandon or terminate the Condominium;

- (b) except in the case of any addition of the additional real estate pursuant to the provisions hereof, change the pro-rata interest or obligations of any unit for the purpose of:
  - (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or
  - (ii) determining the pro-rata share of ownership of each unit in the Common Elements;
- (c) partition or subdivide any unit;
- (d) except in the case of any addition of the additional real estate pursuant to the provisions hereof, by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause);
- (e) use hazard insurance proceeds for losses to any part of the condominium (whether to units or to Common Elements) for other than repair, replacement or reconstruction thereof.

#### Section 8.9 Notice

Each first mortgagee and each insurer or guarantor of a first mortgage, upon written request stating its name and address and describing the unit encumbered by the first mortgage, held, insured or guaranteed, shall be entitled to timely written notification by the Association of (i) any proposed action which requires consent of a specified percentage of first mortgagees; (ii) any condemnation or casualty loss that affects either a material portion of the Condominium or the unit securing its first mortgage; (iii) any 60-day delinquency in the payment of assessments or charges owed by the Unit Owner of the unit on which the first mortgagee held its first mortgage or in the performance of any obligation under this Declaration or the By-Laws by said Unit Owner; or (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Each first mortgagee who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of eligible mortgage holders shall be considered an "eligible mortgage holder." With respect only to non-material amendments (which excludes items (a) to (o) of Section 8.7), such as for the correction of technical errors or for clarification, any first mortgagee who receives a written request by the Association, or any Unit Owner, to approve an addition or amendment to the Declaration or By-Laws who does not deliver or post to the requesting party a negative response within 30 days shall be deemed to have approved such request.

#### Section 8.10 Assessments

Assessments shall be due and payable in quarterly installments. As provided in Article VIII of the By-Laws and as legally required by Section 47C-3-115 of the Act, Declarant shall pay all accrued expenses of the Condominium until assessments are levied against the units. An assessment shall be deemed levied against a unit upon the giving of notice by the Board to a member of the Association who is a Unit Owner of that unit. Unit Owners shall have no obligation to pay monthly assessments until an assessment is levied. Assessments will begin at such time as the Board elects.

Section 8.11 Rights of First Mortgagee; Insurance Proceeds or Condemnation Awards

With respect to first mortgages held by or for the benefit of FNMA/FHLMC, no provision of this Declaration or the By-Laws shall be deemed to give a Unit Owner, or any other party, priority over any rights of a first mortgagee pursuant to its first mortgage on said Unit Owner's unit, in the case of a distribution to said Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of units and/or common Elements.

ARTICLE IX

CONDEMNATION

If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced, and proceeds of insurance shall be used and applied in accordance with provisions of Section 47C-3-113(e) and (h) of the Act.

ARTICLE X

AMENDMENT

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Sections 47C-2-108 and 47C-2-117 of the Act.

ARTICLE XI

TERMINATION

The Condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1 Covenants Running with the Land

All provisions of this Declaration shall be construed to be covenants running with the Land, and with every part thereof and interest therein including, but not limited to, every unit and the appurtenances thereto; and each and every provision of this Declaration shall bind and inure to the benefit of all Unit Owners and claimants of the Land or any part thereof or interest therein and their heirs, executors, administrators, successors and assigns, including the Declarant herein.

Section 12.2 Duration

So long as North Carolina law limits the period during which covenants restricting lands to certain uses may run, it shall be the duty of the Board of Directors of the Association to enforce the covenants contained herein, as amended from time to time, to be extended when necessary by filing a document bearing the signature of a majority of the Owners reaffirming and newly adopting the Declaration and covenants running with the land. Such adoption by a majority shall be binding on all, and each Owner of any unit, by acceptance of a deed therefore, is deemed to agree that the Declaration and covenants may be extended as provided in this Section 12.2.

Section 12.3 Articles of Incorporation and By-Laws of GULF STREAM HOMEOWNERS ASSOCIATION, INC.

A true copy of the Articles of Incorporation and By-Laws of the GULF STREAM HOMEOWNERS ASSOCIATION, INC., which together with this Declaration shall govern the administration of the Condominium, is attached hereto as Exhibits B and C, and by reference, is made a part hereof as if fully set out word for word.

Section 12.4 Interpretation

The provisions of this Declaration and By-Laws shall be liberally construed to effectuate its purpose in creating a uniform plan for the development and operation of the Condominium Property.

Section 12.5 Law Controlling

This Declaration and the By-Laws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina. Provided, however, that if there are conflicts or inconsistencies between the Act, and this Declaration (in that order) the Act shall prevail and the Unit Owners covenant to vote in favor of such amendments as will remove such conflict or inconsistencies, except that where the Act, the Declaration, or the By-Laws conflict and the provisions of the Act are merely enabling and not mandatory, the provisions of the Declaration or the By-Laws shall control.

Section 12.6 Gender and Grammar

The singular, whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereto apply to corporations or individuals, men or women, shall in all cases be assumed as through in each case fully expressed.

Section 12.7 Captions

Captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Declaration or the intent of any provision hereof.

Section 12.8 Non-Waiver

The failure of the Declarant, Board of Directors, or any Owner, or their respective legal representatives, heirs, successors and assigns, to enforce any restriction contained in this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

Section 12.9 Severability

All of the covenants, conditions, and By-Laws, restrictions and reservations contained in this Declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof is void, unlawful or unenforceable shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations or clause or phrase thereof.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be signed and sealed by its duly authorized officers, as its act and deed, the day and year hereinafter set out.

KDH ASSOCIATES

Date: 8/4/87

BY: Robert W. Owens (SEAL)  
Robert Wayne Owens, Declarant

Date: 8/4/87

BY: Edward H. Winks, Jr. (SEAL)  
Edward H. Winks, Jr., Declarant

Date: 8/4/87

BY: Thomas M. Gilbert (SEAL)  
Thomas M. Gilbert, Declarant

Date: 8/4/87

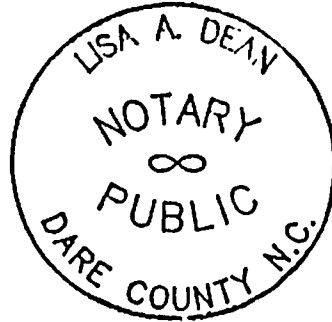
BY: Robert N. Henderson (SEAL)  
Robert N. Henderson, Declarant

STATE OF NORTH CAROLINA  
~~XXXX~~/COUNTY OF DARE

This the 4th day of August, 1987, Robert Wayne Owens, Edward H. Winks, Jr., Thomas M. Gilbert and Robert N. Henderson personally came before me, who being by me duly sworn, say that they are General Partners of KDH ASSOCIATES and acknowledge the said writing is an act of said General Partnership.

12/14/87,  
My Commission Expires

Lisa A. Dean  
Notary Public



## EXHIBIT A

All those certain lots or parcels of land together with the buildings and improvements thereon, lying and being in the Town of Kill Devil Hills, in Atlantic Township, Dare County, North Carolina, in the subdivision known as Kitty Hawk Shores, and bounded as follows:

BEGINNING at a post or other marker situated in and on the Northeast margin of the intersection of Prospect Avenue and N.C. State Highway, designated as U.S. Highway No. 158, known as Virginia Dare Trail in the subdivision known as Kitty Hawk Shores in the Town of Kill Devil Hills, N.C., running thence from the beginning point along the East margin or right of way of said highway North 19 deg. 30 min. West 100 feet to a post or other marker; thence North 70 deg. 30 min. East and parallel with Prospect Avenue 500 feet, more or less, to the Atlantic Ocean; thence along the Atlantic Ocean following the various courses and meanderings thereof in a general southeasterly direction of 100 feet, more or less, to the point of intersection thereof by the North margin or right of way of Prospect Avenue; thence along the North margin or right of way of Prospect Avenue South 70 deg., 30 min. West 500 feet, more or less, to the point of beginning.

Same being Lots Nos. 1 and 2 in Block 12, Section 1 of the Corrected Amended Map of a Portion of Section 1 of the Subdivision known as Kitty Hawk Shores, as shown and delineated on a map or plat thereof made by C. R. McIntire, April 1937, and recorded in Map Book 1, page 171, Dare County Registry.