



Prepared by and return to:  
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**RESTATEMENT AND AMENDMENT OF RESTRICTIVE COVENANTS  
FOR THE PROTECTION OF  
HARBOUR BAY SUBDIVISION**

THIS RESTATEMENT AND AMENDMENT OF DECLARATION OF RESTRICTIVE COVENANTS, made this 21st day of November, 2000 by WALTER J. MARSH and wife, VIRGINIA B. MARSH (hereinafter referred to as the "Declarant").

**RECITALS:**

1. Declarant filed for record in the office of the Register of Deeds of Dare County, North Carolina, on April 1, 1999 in Book 1255 at Page 196 a Declaration of Restrictive Covenants (the "Initial Filing");
2. The Initial Filing contained inaccurate descriptions contrary to the intent and development plans of the Declarant;
3. The Initial Filing was inaccurate in references and failure to incorporate provisions of the The Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act");
4. Terms of definitions set forth in the initial filing are inconsistent with the Act and the proposed plans of the Declarant for access to Kitty Hawk Bay and associated amenities;
5. Subsequent to the Initial Filing, the Declarant has explored and proposed a joint undertaking of a Community Pier with the Town of Kitty Hawk which would afford better sound access and amenities which enabling provisions require amendments to the Initial Filing;
6. That in addition to the Recitals stated in the Initial Filing, it is the intention of the Declarant to provide opportunities to the owners within Harbour Bay to enjoy the unique amenities of a Bay environment that enrich their quality of life and engenders an overall spirit that establishes Harbour Bay Subdivision as a rewarding place to live and grow; and
7. That to accomplish the objectives set forth in these Recitals, the Declarant believes it is in the best interest of Harbour Bay Subdivision for the Declarant to maintain a significant and influential role in the implementation of the development of Harbour Bay and adjoining areas and therefore the Declarant has retained rights over the property during the developmental process.

NOW, THEREFORE, in consideration of the foregoing recitals, the provisions of which are a substantive part of this Declaration, and other good and valuable consideration, all that property more particularly described in Section 2.01, and any other property annexed pursuant to Section 2.02 shall be held, conveyed, apothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, conditions, easements and restrictions set forth in the Governing Documents, as modified and amended from time to time, all of which shall run with the real property subjected to the Governing Documents and which shall be binding on all title or interest in all or any portion of Harbour Bay, their



respective heirs, personal representatives, successors, transferees and assigns, as well as occupants, guests and invitees, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1.01 **Definitions.** When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

Section 1.02 "Act" refers to the North Carolina Planned Community Act as codified in Chapter 47F of the North Carolina General Statutes.

Section 1.03 "Annexation" refers to adjacent property within the vicinity of Harbour Bay Subdivision which is permitted to be annexed to this Declaration.

Section 1.04 "Architectural Standards Committee" shall mean and refer to the committee appointed by the Declarant or the Association to review and either approve or disapprove of all structural improvements, additions, modifications and changes at Harbour Bay as provided in Article V.

Section 1.05 "Articles of Incorporation" shall mean the Articles of Incorporation of Harbour Bay Homeowners Association, Inc. filed on June 24, 1999 in the office of the Secretary of State of North Carolina.

Section 1.06 "Assessments" shall mean and refer to any assessments levied by the Association in accordance with the governing documents.

Section 1.07 "Association" shall mean and refer to Harbour Bay Homeowners Association, Inc., a non-profit corporation, its successors and assigns, the entity responsible for carrying out the objectives of the Governing Documents.

Section 1.08 "Board" shall mean and refer to the governing body of the Association as more fully described in the Bylaws and Articles of Incorporation of the Association.

Section 1.09 "Bylaws" shall mean and refer to the Bylaws of Harbour Bay, Inc., as adopted by the Board of Directors, as amended from time to time.

Section 1.10 "Commercial Uses" shall refer to Lots C-1 and C-2 which abut South Croatan Highway which owners of said property shall be members as provided in Article VI.

Section 1.11 "Common Area" shall refer to all real property owned or hereafter owned by conveyances or dedications by the Declarant to the Association for the use or enjoyment of the Members.

Section 1.12 "Common Expenses" means expenditures made or financial liabilities of the Association, together with any allocation to reserves.

Section 1.13 "Common Expense Liability" means the liability for common expenses allocated to each lot.

Section 1.14 "Declarant" shall mean Walter J. Marsh and wife, Virginia B. Marsh and their successors, transferees and assigns.

Section 1.15 "Declaration" shall mean and refer to the Restatement and Amended Declaration of Protective Covenants for Harbour Bay Subdivision.

Section 1.16 "Dwelling Unit" shall mean and refer to any improved property intended for use and occupancy by a single household.

Section 1.17 "Governing Documents" shall refer to this Declaration, the Articles of Incorporation and Bylaws of the Association.

Section 1.18 "Harbour Bay" or "Harbour Bay Subdivision" shall refer to all properties of Harbour Bay Subdivision either by this or by Declaration.

Section 1.19 "Improvements" shall mean and refer to any additions to a Lot including a dwelling, garage, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements and any other construction which has been approved by the Architectural Standards Committee of Harbour Bay.

Section 1.20 "Living Area" shall mean and refer to enclosed heated covered areas within a Dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

Section 1.21 "Lot" shall mean and refer to any separately numbered plot of land shown upon now or subsequently recorded Subdivision Plat of Harbour Bay Subdivision.

Section 1.22 "Member" shall mean and refer to every person or entity who holds membership or voting rights in the Association.

Section 1.23 "Owner" shall mean and refer to record owner of a lot in Harbour Bay.

Section 1.24 "Period of Declarant Control" shall mean and refer to period of time commencing April 1, 1999 and continuing until the earlier of: (i) such time as Declarant shall cease to own at least twenty-five percent (25%) of the lots shown in the initial filing; provided, however, if after the expiration of such period of time, there are annexations to Harbour Bay and Declarant shall own more than twenty-five percent (25%) of the lots shown in Harbour Bay as amended by the terms of such annexation, then such period of time shall be reinstated and continue until the earlier of: (i) April 1, 2009; or (ii) such time as Declarant shall cease to own at least twenty-five percent (25%) of all lots within Harbour Bay.

Section 1.25 "Person" means a natural person, corporation, or a business trust, estate, trust, partnership, association, joint venture, government.

Section 1.26 "Soundside Owners" shall mean and refer to the owners of Lots 19, 20 and 21 of Harbour Bay Subdivision.

Section 1.27 "Soundside Access Area" is that area owned by the Declarant which the Declarant has retained fee simple ownership with reservations for those uses and amenities to be enjoyed by Harbour Bay Subdivision as set forth in Section 3.06.

Section 1.28 "Special Declarant Rights" means rights reserved for the benefit of the Declarant including, without limitation, any right (i) to complete improvements indicated on plat and plans filed with the Declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising, and models; (iv) to use easements through the common elements for the purpose of making improvements within Harbour Bay or within real estate which made Harbour Bay by annexations; (v) to make Harbour Bay part of a larger subdivision; (vi) to make a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any Period of Declarant control.

Section 1.29 "Subdivision Plat" shall refer to that final plat of Harbour Bay recorded in Plat Cabinet E, Slide 136 of the Public Registry of Dare County.

Section 1.30 "Supplemental Declaration" shall mean an amendment or supplement to this Declaration which subjects additional property to this Declaration.



ARTICLE II

STATEMENT OF SUBMISSION

Section 2.01 **Submission of Property.** The real property which shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the Governing Documents shall consist of the following:

- (a) All lots shown on that plat entitled "Final Plat of Harbour Bay which appears of record in the Office of the Register of Deeds of Dare County, North Carolina in Plat Cabinet E, at Slide 136 (the "Subdivision Plat");
- (b) Common Areas:
  1. That area designated "Common Area" on the subdivision plat between Lot 1 on the west and commercial property designated as C-1 on the east;
  2. That area designated "Common Area" on the subdivision plat situated between Lot 35 on the west and that commercial property designated as C-2 on the east;
  3. Areas of island landscaping and signage situated in the middle of Harbour Drive, said areas commencing just west of the intersection of Harbour Bay Drive and U.S. Highway 158; and
  4. Common area designated "Common Area" and reserved for parking and sound access as shown on the subdivision plat.

Any other property formerly designated on the subdivision plat has been withdrawn and shall be retained in fee simple ownership by Declarant and shall not be deemed submitted and added to the Association as a Common Area.

Section 2.02 **Annexation by the Declarant.** During the Period of Declarant Control, the Declarant reserves the right to add any real property contiguous to or in the vicinity of Harbour Bay without the consent of the Members. Declarant shall have no obligation to add any additional property nor shall Declarant have any obligation of any kind to annex any additional property in any sequential order. Annexations by Declarant shall be evidenced by the filing of a Supplemental Declaration which shall submit the annexed property to the terms and provisions of the Governing Documents of Harbour Bay. Declarant's right of annexation during the period of Declarant Control shall include the right to add additional Common Areas and upon any said dedication and/or conveyance of said additional Common Area property to the Association, such Common Area additional property shall be held and maintained by the Association as Common Area.

Section 2.03 **Annexation by Members.** Except as permitted by Section 2.02 additional property may be annexed to Harbour Bay only with the consent of the Members entitled to 2/3rds of the votes of the Association for voting by person or proxy at meeting; provided, during the Period of Declarant Control the Declarant must also consent to such actions.

ARTICLE III

PROPERTY RIGHTS

Section 3.01 **Owner's Easements of Enjoyment.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:



- (a) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any amenity situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights by an Owner for any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;
- (c) the right of the Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes in the Association, to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Association's Board; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded; provided further that for so long as Declarant shall own any portion of Harbour Bay or shall have the right to annex additional properties pursuant to Article II, Section 2.02 hereof, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances;
- (d) the right of the Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes in the Association, to dedicate to any public agency, authority or utility, or to transfer to any other party, fee simple title to all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances; and further provided for so long as the Declarant shall own any portion of Harbour Bay or shall have the right to annex additional properties pursuant to Article II, Section 2.02 hereof, Declarant must also consent to such action.
- (e) the right of the Association to impose rules and regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area; and
- (f) the right of the Association to borrow money for the purpose of improving the Common Area and facilities thereon and, with the consent of the Members entitled to cast at least eighty percent (80%) of the votes of the Association, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association) provided, however, no mortgage, encumbrance or hypothecation or foreclosure of the lien thereby created, shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances, provided further that for so long as Declarant shall own any portion of the Harbour Bay Subdivision or shall have a the right to annex additional properties pursuant to Article II Section 2.02 hereof, Declarant must also consent to such action.



Section 3.02 **Easements for Declarant.** As long as the Declarant retains ownership of any Lots within the Harbour Bay Subdivision, Declarant shall have alienable and transferable right and easement, for purposes of ingress and egress of all roads within the Subdivision for the purpose of constructing any improvements in and to the Lots and for installing, maintaining, repairing and replacing such other improvements to the Harbour Bay Subdivision which may be undertaken by Declarant but for which in no event shall Declarant have any obligation to do any of the foregoing.

Section 3.03. **Easements for Utilities and Drainage.** The Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric, gas, water, sewer, drainage facilities, telephone systems, cable television services, and conduits for the purpose of bringing public services to the Harbour Bay Subdivision, on, in or over those made on the Harbour Bay Subdivision Plat. Declarant reserves unto itself, its successors and assigns, perpetual, alienable and releasable easements within the Harbour Bay Subdivision and the right on, over and under the ground to cut drainways for surface water and make any grading of the soil whenever and wherever such action may appear to Declarant to be necessary to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

Section 3.04. **Maintenance Easement.** There is hereby reserved for the benefit of Declarant, its respective agents, employees, successors and assigns, the right to enter upon any Lot, such entry to be made by personnel with tractors or other suitable devices, for the purposes of mowing, removing, clearing, cutting or pruning underbrush, weeds or unsightly growth for the purpose of building or repairing any land contour or other earth work which in opinion of the Declarant or its agents detracts from or is necessary to maintain the overall beauty, ecology, setting and safety of the property. Such entrance shall not be deemed as trespass. Declarant, and its successors, and/or assigns or designees may likewise enter upon any Lot to remove any trash which is collected without such entrance and removal being deemed as trespass. The provisions of this paragraph shall not be construed as an obligation on the part of the Declarant and/or any designee of Declarant to undertake any of the foregoing.

Section 3.05. **Environmental Easement.** It is hereby reserved for the benefit of Declarant, and its respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all Lots for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated by any governmental entity or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

Section 3.06. **Soundside Access Area.** Soundside Access Area is that area owned by the Declarant and is reserved for the following uses:

- (a) Appurtenant Easements: The owners of Lots 19, 20 and 21 (the "Soundfront Owners") shall have an easement appurtenant extending from designated points along the western margin of Moore Shore Road across a portion of that area formerly designated as Common Area into Kitty Hawk Bay for the purpose of allowing the Soundfront Owners the option to submit a CAMA permit application and construct a pier for their personal use. The Designated Appurtenant Easements shall be no wider than 12 feet in width. All responsibility, maintenance or any liability associated with the use of these easement appurtenants shall be and remain the sole responsibility of the respective soundfront owners.
- (b) Community Pier: Declarant has made a proposal to the Town of Kitty Hawk for the construction of a community pier which would access Kitty Hawk



Bay on the northeastern corner of that area previously designated as "Common Area". The Declarant's proposal to the Town of Kitty Hawk involves a joint undertaking by the terms of which the following amenities would be constructed: a 20 foot wide pier extending 200 feet into Kitty Hawk Bay with a 400 square feet gazebo area at the pier's western terminus with a kayak access landing and storage rack (the "Soundfront Amenities").

- (c) Dedication of Soundfront: Declarant's proposal to the Town of Kitty Hawk includes provisions for the conveyance of soundfront property to the Town of Kitty Hawk to facilitate the dedication, construction and use of the Soundfront Amenities including accessory parking. This proposal to the Town of Kitty Hawk will also accommodate the relocation of Moore Shore Road and the dedication of an 8 foot wide bike/pedestrian path and access path to be located between the western boundary of Lots 18, 19, 20 and 21 of Harbour Bay and the eastern margin of Moore Shore Road as relocated. In the event that Declarant's proposal of a joint undertaking of the Soundfront Amenities is not accepted by the Town of Kitty Hawk, then it is Declarant's intention to construct the pier, gazebo and kayak access landing with rack storage and convey said amenities and related soundfront as additional Common Area to the Association no later than the expiration of the Period of Declarant Control.

Section 3.07. **Area Designated 50 Foot R/W.** Declarant has retained fee simple ownership of that area designated 50 foot R/W on the subdivision plat which area has been reserved for the future dedication of having said area improved as a north-south throughfare and connecting properties to the north and south of Harbour Bay Subdivision.

#### ARTICLE IV

#### MAINTENANCE AND INSURANCE

Section 4.01 **Maintenance.** Each Lot Owner shall be responsible for all maintenance and repair of his Lot and/or Dwelling Unit together with all other improvements therein and all landscaping grounds on and within the Lot. Each Owner shall be responsible for maintaining his Lot in a neat, clean and sanitary condition and such responsibility shall include the maintenance and care of all exterior surfaces of all improvements and all trees, shrubs, hedges, walkways, driveways and other landscaping consistent with site plan and plans approved by the ASC.

Section 4.02 **Driveway Culverts.** Each Lot Owner when making a driveway connection to street shall preserve the existing swale or provide a suitable drainage culvert so as to allow for the unimpeded water movement in order to maintain the integrity of the stormwater swale. Such maintenance by the Owners, removal of sediments within the swales, as needed and upkeep of the vegetation cover on a periodic, as required, basis. Vehicular traffic and the parking of any vehicles are strictly prohibited within the stormwater's swales.

Section 4.03. **North Carolina Division of Environmental Management Water Quality Section Stormwater Regulations.** As a condition to the North Carolina Stormwater Management permit issued by the Division of Water Quality for Harbour Bay Subdivision, the following covenants may not be changed or deleted without the consent of the North Carolina Division of Environmental Management Water Quality Section:

- (a) No more than 30% of any lot shall be covered by structures or impervious materials. Impervious materials include asphalt, gravel, concrete, brick, stone, slate or similar material but do not include wood decking or the water surface of swimming pools.
- (b) Swales shall not be filled in, piped, or altered except as necessary to provide driveway crossings.
- (c) Any built-upon area in excess of the permitted amount requires a state stormwater management permit modification prior to construction.

(d) All permitted runoff from outparcels or future development shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the system as permitted.

Section 4.04 **Landscaping.** The following shall be planted at a minimum on each lot no later than thirty (30) days upon issuance of an occupancy permit to the Dwelling Unit: thirty (30) bushes, two (2) trees with trunks of 2" in diameter, one (1) tree having a trunk of 3" in diameter, two feet from the ground of said tree to be located in an area abutting the right-of-way of Harbour Bay Drive. In addition, each front yard shall be sodded and a shallow well and irrigation system installed to water the sodded lawn.

Section 4.05 **Exterior Maintenance.** In addition to the maintenance of the Common Areas by the Association and after thirty (30) days written notice to any Owner which shall specify the required maintenance, the Association shall have the right but not the obligation to provide (a) maintenance upon any Lot and (b) maintenance upon any Dwelling Unit, which is subject to assessment under Article VII hereof. Such maintenance includes but is not limited to painting, repairing, replacing and care of roofs, gutters, downspouts, removal of signs in violation of this Declaration, and exterior improvements of any Dwelling Unit. Also, such maintenance may include mowing, trimming and cleanup on any Lot. The cost of any such maintenance shall be assessed against the lot or Dwelling Unit upon which such maintenance is done and shall be added to and become part of the regular annual assessment or charge to which Lot or Dwelling Unit is subject and, as part of such regular annual assessment or charge, it shall be a lien against any such Lot or Dwelling Unit as heretofore defined and limited, and a personal obligation of the Owner and shall continue to become due and payable in all respects as provided herein.

Section 4.06 **Insurance on Dwelling Units.** Each Owner of any Dwelling Unit within Harbour Bay, by acceptance of a deed therefore, whether or not is shall be expressed in said deed or by exercise of any act of ownership, is deemed to covenant:

- (a) To keep each Dwelling Unit insured against loss by fire or other casualty, with extended coverage insurance, in an amount equal to at least ninety percent (90%) of the replacement cost of such Dwelling;
- (b) To name the Association as insured "as its interest may appear" so that the Association shall be entitled to receive notice of cancellation of such insurance policy;
- (c) To build or restore such Dwelling Unit in the event of damage thereof and to apply the full amount, to the extent necessary, of any insurance proceeds to the restoration or repair of such Dwelling Unit; and
- (d) To keep the Dwelling Unit in good repair as required by this Declaration or the Bylaws.

In the event of non-payment of any required premium then the Association is authorized, but not obligated or required, to pay such premium and the sum so paid shall become a lien upon the Dwelling Unit enforceable in the same manner and to the same extent as provided for enforcement of liens for assessments hereunder.

Section 4.07 **Exemption.** Article IV is not applicable to commercial Lots C-1 and C-2.

## ARTICLE V

### ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

Section 5.01 **Purpose.** In order to protect the natural beauty of Harbour Bay and to protect property owners within Harbour Bay, from depreciation of values that could be caused by poor design and failure of materials, inharmonious color schemes haphazard location of improvements, Lots within Harbour Bay and all improvements located thereon shall be subject to the restrictions set forth in this Article V. Every grantee of any interest in Harbour Bay by





acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article V.

**Section 5.02 Architectural Standards Committee.**

(a) Membership: The Architectural Standards Committee (the "ASC") shall be that ASC appointed by the Declarant during the Period of Declarant Control and thereafter appointed by the Board.

(b) Procedure: At least (30) days prior to the proposed commencement of any construction, the plans shall be submitted to the ASC. The ASC's approval, disapproval or waiver as required in these covenants shall be in writing and the decision of a majority of the ASC in case of any disagreement among ASC members as to the approval, disapproval or waiver by the ASC shall be controlling. In the event the ASC or its designated representatives fail to approve or disapprove within thirty (30) days after plans have been received by it, approval of the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with. Further, in the event any construction is commenced on any Lot without submission to the ASC of the plans with respect thereto, and no action or suit is instituted against the Owner of such Lot by the Association or any Owner of any other Lot constituting a portion of the Subdivision within ninety (90) days after the foundation of any building being constructed on any such Lot is completed, then, and in any such event, approval by the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with.

**Section 5.03 Approval of Plans.**

(a) Submission of Plans. No building, wall, driveway, swimming pool, tennis court, or other structure, site work or clearing preparatory to construction shall be begun, altered, added to, maintained or reconstructed on any Lot until the plans and specifications for such work have been reviewed and approved by the Architectural Standards Committee (hereinafter referred to as the "ASC"). Before commencing such review, a Lot Owner shall submit to the ASC three (3) completed sets of plans and specifications, including, but not limited to: foundation plan, floor plan or plans, the four directional elevations, a schedule of proposed exterior colors and material, shingle colors, grade and weight, plan showing driveway, parking, and proposed commencement date of construction and expected completion of improvement. The ASC shall have the absolute and exclusive right to refuse to approve any such plans and specifications which are not suitable or desirable in the opinion of the ASC for any reason, including purely aesthetic reasons which, in the sole and uncontrolled discretion of the ASC, shall be deemed sufficient. If construction of any improvement required to be approved shall not have been begun before the expiration of six months following approval, said approval shall be void and of no effect. In such event, the plans of such improvement shall be resubmitted to the ASC for reconsideration and the ASC may, in its discretion either confirm its earlier approval of plans or disapprove. All plans must be in compliance with those Guidelines for Building and Development administered by the ASC which as of the date of this Declaration are those guidelines set forth in Section 5.03(c) herein.

(b) Facility Fee to Declarant. During the Period of Declarant Control and at the time of submittal of plans and prior to any approval by the ASC, the Owner must submit a facility fee to the Declarant equal to the sum of Three Dollars (\$3.00) per square foot of Living Area proposed to be built. The facility fee is in partial reimbursement of capital expenditures incurred by the Declarant related to infrastructure improvements of Harbour Bay. Subsequent to the period of Declarant Control, the Association shall collect a facility fee from each Owner submitting plans and remit said fee to the Declarant until the Declarant has been paid in full. Thereafter, the Association shall retain the facility fee from which amount the sum of \$500.00 shall be applied towards administrative costs associated with the plan review process and the balance shall be deposited in the Capital Reserve Account of the Association.

(c) Guidelines for Building and Development.

1. The Declarant shall prepare the initial design development guidelines and application of review procedures which shall be applicable to all construction activities within Harbour Bay. Each applicant acknowledges that composition of the ASC will change from time



to time and that decisions regarding aesthetic matters and interpretation and application may reasonably vary from time to time. The approval of the ASC of any proposal or plans or specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ASC, shall not be deemed to constitute a waiver of any rights with whole approval consent as to similar proposals, plans and specifications.

2. No Dwelling Unit which has an area of less than 1,800 square feet, exclusive of porches, breezeways, steps and garages, shall be erected or placed or permitted to remain on any Lot.

3. Entrance and yard lighting shall be small wattage, low level ground lighting. High intensity flood lighting from poles or dwellings is not permitted unless specifically approved in writing by the ASC.

4. Maximum height shall be in accordance with the Town of Kitty Hawk Zoning Ordinance.

5. Drives shall not exceed eighteen (18) feet in width at connection to streets, paved with concrete, asphalt or bricks. Colored drives will not be approved (red, green, etc.). Parking spaces under houses, in garages or carports or in driveways will be acceptable.

6. A landscaping plan must be submitted in accord with the requirements of Section 4.04 herein.

7. Set back restrictions are those set forth on the Subdivision Plat.

8. Signs: Only the following signs are permitted:

(a) Permanent Owner Identification - 5" X 20" with Owner's name or adopted name with colors to be approved.

(b) Real Estate Sales or Rentals - One 12" X 20" Realtors's "For Sale" sign and/or one 12" X 20" Realtors "For Rent" sign allowed for each property.

(c) Contractor Sign - One 24" X 36" sign allowed per lot.

(d) Marketing Signage - During the Period of Declarant Control, the Declarant shall have the right to locate signs indicating the location of sales and rental centers, any recreational facilities and amenities and such other information as may be required on any lot which the Declarant locates or needs a marking medium.

9. Utility lines - All water, sewer, electrical and cable television lines are to be installed underground.

10. Mail boxes and newspaper receptacles will be of standardized design approved by the ASC.

11. Vents, Pipes, Air-Conditioning Equipment, Down Spouts and Lights - No vent or other pipes or appendages may extend from the front of any Dwelling Unit unless screened from public view by a screening material or shrubbery approved by the ASC. Exterior air-conditioning equipment and heating equipment must be screened from public view by a screening material or shrubbery approved by the ASC. Down spouts and gutters must be so constructed as to not promote the erosion of the soil on any lot. Exterior spotlighting shall be directed so as not to cast light directly on another Dwelling Unit.

12. Garbage and Storm Receptacles - Except as required by any appropriate governmental authority, each Owner shall provide receptacles for garbage, and all garbage receptacles, tools and equipment for use on the Lot of any Owner or otherwise shall be placed in a fenced area in accordance with reasonable standards established by the ASC to shield same from general visibility from roads and adjoining lots. No fuel tanks or similar storage receptacles, other than solar panels and related storage facilities, may be exposed to view and



such fuel tanks or similar storage receptacles may be installed only within the Dwelling Unit, or any accessory building, or building, or buried underground.

13. Sewage Disposal – Prior to the occupancy of any Dwelling Unit located in Harbour Bay, proper and suitable provisions shall be made by the owner for the disposal of sewage by means of a septic tank or tanks constructed on his Lot, to be constructed, maintained and used only in accordance with local and state laws and regulations. In the event that a community or municipal sewage system is constructed then each Owner will pay their pro rata share of the associated costs.

14. Tree Cutting – Trees measuring three (3) inches or more in diameter at a point two feet above the ground and any flowering trees or shrubs above five (5) feet in height may not be removed from Harbour Bay without written approval of the ASC unless located within five (5) feet of a Dwelling Unit, or site for such Dwelling Unit, septic tank, drain field, driveway or walkway.

15. Vegetation – No existing vegetation or sand dunes shall be disturbed during construction without the express written consent of the ASC. The ASC shall require written proposals for the restabilization of any such disturbed area. Any vegetation disturbed during construction shall be repaired to the satisfaction of the ASC prior to Owner applying for an occupancy permit. However, the ASC may not approve the alteration of any vegetation, swale, or dune shown on the plans approved by the Department of Environment and Natural Resources, Division of Water Quality without submitting a revision to Harbour Bay's permit, No. SW7981112.

16. Residential Lot Coverage – In compliance with the stormwater permit issued by the State of North Carolina's Department of Environment and Natural Resources, Division of Water Quality, the following restrictions shall apply:

(i) The total allowable built-upon area per lot is 4,428 square feet per lot and shall be inclusive of that portion of the right of way between the front lot line and the edge of the pavement, structures, and walkways of brick, stone and slate, but specifically not including wood decking.

(ii) The covenants pertaining to stormwater regulations may not be changed or deleted without concurrence of the State of North Carolina.

(iii) Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings is strictly prohibited by any persons.

(d) Variance. The ASC may from time to time grant the Owners of the property in Harbour Bay a waiver or variance of the provisions of this Declaration. The conditions under which such a waiver or variance may be granted shall be in the total discretion of the ASC. The expressed purpose of the powers as described in the paragraph is to enable the committee to alleviate hardships created by the terms of this Declaration under circumstances which are beyond control or fault of the parties and would create irreparable harm or unnecessary hardship without such action; or under conditions where title to the property in question is clouded, encumbered or detrimentally affected by the existence of conditions which cannot otherwise be corrected.

(e) Procedure. At least thirty (30) days prior to the proposed commencement of any construction, the plans shall be submitted to the ASC. The ASC's approval, disapproval or waiver as required in these covenants shall be in writing and the decision of a majority of the ASC in case of any disagreement among ASC members as to the approval, disapproval or waiver by the ASC shall be controlling. In the event the ASC or its designated representatives fail to approve or disapprove within thirty (30) days after plans have been received by it, approval of the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with. Further, in the event any construction is commenced on any Lot without submission to the ASC of the plans with respect thereto, and no action or suit is instituted against the Owner of such Lot by the Association or any Owner of any



other Lot constituting a portion of the Subdivision within ninety (90) days after the foundation of any building being constructed on any such Lot is completed, then, and in any such event, approval by the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with

Section 5.04 **Approval Not a Guarantee.** No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as presenting or guaranteeing that any Dwelling Unit or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, nor the Architectural Standards Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article V, nor any defects in construction undertaken pursuant to such plans and specifications.

Section 5.05 **Use of Lots and Dwellings Units.** No Lot (other than C-1 and C-2) shall be used for business, manufacturing, commercial or professional purposes except those home occupations as may be approved by the Town of Kitty Hawk. No noxious or offensive trade of activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 5.06 **Exterior Appearance.** No fence, wall, hedge, or mass planting shall be permitted except upon approval by the ASC as to location, style, design and materials. Any unenclosed garages or carports must be adequately screened from street views. Further, no foil or other reflective material shall be used on any windows for sunscreens, blinds, shades or other purposes nor shall any window-mounted heating or air-conditioning units be permitted.

The ASC shall determine the standards and issue guidelines for the implementation thereof for the location, material, color and design of all mail and newspaper boxes and the manner which they shall be identified.

Section 5.07 **Antennas.** Except for 'dish' antennas designed to receive direct broadcast satellite service, including direct-to-home satellite service, one meter (39") or less in diameter, antennas designed to receive video programming services via MMDS (wireless cable), no outside antennas or satellite dishes and no free standing transmission or receiving towers shall be erected on any Lot within Harbour Bay without the prior written permission of the ASC. Except as otherwise reasonably required in order to receive the intended signal, any satellite dish erected on any Lot shall be affixed to the Dwelling, shall be a color which blends with its surrounds, shall have a mast only as high as reasonably necessary to receive the intended signal and shall not be visible from that street that accesses the Lot.

Section 5.08 **Animals and Pets.** Animals, livestock or poultry of any kind shall not be raised, bred or kept on any Lot except dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and provided that they are under the control of their owners at all times.

Section 5.9 **Prohibited Structures.** No structure of a temporary character, house trailer of any kind, tent, shack, garage, mobile home, barn or other outbuilding shall be used, placed or allowed on any Lot or building site of land at any time either temporarily or permanently, except such temporary structures as may be necessary for the storage of materials by or for the convenience of workmen and contractors during the erection of residences upon said Lots. No temporary structure of any kind, including those hereinabove set out shall be used on any Lot or site at any time as a residence either temporary or permanently. "Modular Home" or similar types of dwellings shall not be constructed or placed upon any Lot or building site.

Section 5.10 **Motor Vehicles, Trailers, Etc.** Each Owner shall provide for parking of automobiles off the streets and roads within the Harbour Bay Subdivision prior to occupancy of any Dwelling Unit. There shall be no outside storage or parking upon any Lot, or within any portion of the Common Areas of any: mobile home, trailer, motor home, tractor, truck (other than pickup trucks), commercial vehicles of any type, camper, motorized camper or trailer, motorized bicycle, motorized go-car, or any other related forms of transportation devices.



Notwithstanding of the restrictions herein, temporary parking (not longer than seven (7) consecutive days) is permitted. These restrictions shall not apply to properly licensed and maintained boats and trailers.

Section 5.11 **Exemption.** Lots C-1 and C-2 are exempt from the provisions and requirements of Article V.

## ARTICLE VI

### HARBOUR BAY HOMEOWNERS ASSOCIATION

Section 6.01 **Membership.** Every person or entity who is a record owner of a fee simple interest in any Lot which is subject by this Declaration and any Supplementary Declaration to assessment by the Association, including the Declarant and any successor shall be a voting member of the Association. The foregoing is not intended to include persons or entities who sold an interest in a Lot merely as security for the performance of an obligation. Such Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

Section 6.02 **Voting Rights.** The Association shall have one class of voting membership and members shall be entitled to one vote for each Lot in which they hold an interest required for membership by (a) of this Article. When more than one (1) person or entity holds such an interest in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they among themselves determine and such persons shall designate one (1) person to vote for their Lot, but in no event shall more than one vote be cast with respect to any such Lot.

Section 6.03 **Declarant's Right to Representation on the Board of the Association.** During any Period of Declarant Control, Declarant shall have the right to designate and select all of the persons who shall serve as members of the Board of the Association. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Board which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board and to replace such person or persons with another person or other persons to act and serve in the place of any member or members of the Board so removed for the remainder of the unexpired term of any member or members of the Board so removed.

Section 6.04 **Meetings.** A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, a majority of the Board, or by Lot Owners having ten percent (10%) of the votes in the Association. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the Secretary shall cause notice to be hand-delivered or sent prepaid by United States Mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a director or officer.

Section 6.05 **Quorum.** A quorum shall be deemed present for a regular or special meeting of the Association, ten percent (10%) of the votes or by proxy.

Section 6.06 **Officers.** Officers of the Association charged with the day to day operation of the Association and who shall be authorized to carry out the Association's business and execute documents on behalf of the Association, shall consist of a President and a Secretary/Treasurer, each appointed by the Declarant during the Period of Declarant Control and thereafter elected by a majority vote of the Board.

## ARTICLE VII

### COVENANT FOR PAYMENT OF ASSESSMENTS

Section 7.01 **Creation of Lien and Personal Obligation for Assessments.** Each Owner, other than the Declarant, of any Lot or Dwelling Unit, by acceptance of a deed therefore, whether or not it shall be so referenced in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to all the covenants, conditions and restrictions of this Declaration and to pay to the Association the following:

(a) regular annual assessments or charges as herein or in the Bylaws provided;  
(b) special assessments for capital improvements or maintenance; and  
(c) costs and expenses, including reasonable attorney's fees, incurred by the Association incidental to the enforcement of any Rules and Regulations, collection of assessments or collection of damages or charges arising under the Bylaws. The annual and special assessments and any liquidated damages or summary charges as herein or in the Bylaws provided, together with such interest thereon and costs of collection thereof as herein provided, together with such interest thereon and costs of collection thereof as herein provided, including attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot or Dwelling Unit against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, including attorney's fees, shall also be the personal obligation of the person or persons jointly and severally, who is/are the Owner(s) of such Lot or Dwelling Unit at the time the assessment becomes due.

Section 7.02 **Purpose of Assessments.** The assessments levied by the Association shall be exclusively to promote the recreation, health, security, safety and welfare of the residents of Harbour Bay and, in particular, for:

(a) the improvement, maintenance, and replacement of the Common Areas including, without limitation, any dedicated amenities.  
(b) maintenance of exteriors of Dwelling Units and related improvements on Lots pursuant to Section 4.05 of the Declaration.  
(c) establishment of capital replacement reserves, and  
(d) for the acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of Harbour Bay, the procurement and maintenance of insurance related to Harbour Bay, its facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association if necessary, and such other requirements as may be necessary to perform all of the aforesaid functions and purposes.

Section 7.03 **Assessment of Uniform Rates for Lots and Dwelling Units.** There will be no difference between the amount assessed against Lots and Dwelling Units.

Section 7.04 **Determination of Assessment.** The initial regular annual assessment for Lots and Dwelling Units is \$875.00. The Board of Directors of Harbour Bay Homeowners Association shall determine, by majority vote, whether to increase the regular annual assessment and whether to levy a supplemental assessment if it is determined that the regular annual assessment funds collected cannot fund the Board's essential functions.

Section 7.05 **Special Assessments for Capital Improvements.** In addition to the regular annual assessments authorized by Section 7.04 hereof, the Association may levy in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any improvement located upon the Common Area including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose; provided, however, during the period of Declarant Control, Declarant must also consent to such action. A special assessment shall be fixed at a uniform rate for all lots and may be collected on a monthly, quarterly or semi-annual basis, as determined by members approving of such assessments.



**7.06 Date of Commencement of Annual Assessments; Due Dates.** The regular annual assessments provided for herein shall be paid either quarterly, semiannually, or annually. Payment of such shall be due for each Lot and Dwelling Unit upon the receipt of title of the Lot or Dwelling Unit from Declarant and on each due date thereafter, or, if title is received from a third party, upon the next scheduled due date. The first regular annual assessment shall be prorated based on the number of days remaining in the calendar year. The due date of any special assessment under this Declaration shall be determined by the Board in the resolution authorizing such assessment.

**7.07 Adoption of Budget and Fixing of Annual Assessments; Maximum Annual Assessment.**

(a) At least thirty (30) days in advance of each annual assessment period, the Board shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. Within thirty (30) days of the adoption of any proposed budget, the Board shall provide to all of the Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting the Owners of a majority of the Lots reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

(b) Until December 31<sup>st</sup> of 2000, maximum annual assessments shall be Eight Hundred Seventy Five Dollars (\$875.00) per lot. The maximum annual assessment for the calendar year 2001 and for each calendar year thereafter shall be established by the Board, may be increased by the Board without approval of the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year. The maximum annual assessment for the calendar year beginning 2001 and each calendar year there after may be increased without limits by a vote of the Members entitled to cast at least two-thirds (2/3s) of the votes of the Association who are voting, and person or by proxy, at a meeting duly called for this purpose.

(c) The Board may fix the annual assessment in an amount not in excess of the maximum, subject to the provisions of Section 7.07 of this Article.

**Section 7.08 Date and Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the date such Lot is made subject to this Declaration. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due dates shall be established by the Board. Annual assessments may be collected on a monthly, quarterly or semi-annual basis, as determined by the Association's Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

**Section 7.9 Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate from time to time established by Association not to exceed eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of a mortgage or deed of trust on real estate under power of sale, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.





Section 7.10 **Declarant's Obligation for Assessments.** The Declarant's obligation for assessments on unsold Lots or Dwelling Units shall, until two-thirds of the Lots or Dwelling Units are conveyed, equal the difference between operating costs and receipts from assessments, excluding reserves for Common Areas. However, Declarant's deficiency contribution obligation under this provision, if any, will cease on January 1, 2002.

## ARTICLE VIII

### GENERAL PROVISIONS

Section 8.01 **Duration and Amendment.** The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended as hereinafter provided. This Declaration may be amended with the consent of the Owners entitled to cast at least sixty-seven percent (67%) of the votes of the Association and may be terminated with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of the Association; provided, however, this Declaration may not be amended or terminated without Declarant's consent for so long as Declarant owns any Lot or may annex Additional Property pursuant to the provisions hereinafter set forth, no amendment purporting to revoke or curtail any right herein conferred to Declarant shall be effective unless executed by Declarant. Any amendment must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the amendment on behalf of the Association that the requisite Owner approval has been obtained and is evidenced by written acknowledgments signed by the Owners approving the amendment and made a part of the Minute Book of the Association; and (3) be properly recorded in the Office of the Register of Deeds of Dare County, North Carolina. For the purpose of this section, additions to existing property by Declarant pursuant to Section 2.02 of this Article shall not constitute an "amendment."

Section 8.02 **Notices.** Any notice required to be sent to Owner, under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Dare County Tax Department at the time of such mailing. Notice to any one of the Owners, if title to a Lot is held by more than one, shall constitute notice to all Owners of a Lot.

Section 8.03 **Enforcement.** In the event of any violation or breach of any of the restrictions contained herein by any property owner or agent of such Owner, Declarant, its successors or assigns, or the Owners of Lots within the Subdivision or any of them, jointly or severally, (and any Association that may become incorporated in the future) shall have the right to proceed in law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach of any of the restrictions set out above, but before litigation may be instituted ten (10) days written notice of such violation shall be given to the Owner or his agent. The failure to enforce any right, reservation or condition contained in this Declaration, however, long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction contained in this Declaration shall in no way affect any of the other restrictions, but they and each of them shall remain in full force and effect. In addition, the State of North Carolina as a beneficiary of the obligations set forth in the Lot coverage provisions of Section 4.03 shall have a right to enforce any violation of said Section.

Section 8.04 **Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Architectural Standards Committee will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive.





Section 8.05 **Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 8.06 **Consent.** Attached to this Declaration as exhibits are copies of those Certificate of Consents executed by at least eighty percent (80%) of the Owners in accordance with the provisions of 47F-2-17 and 47F-3-112 of the Act.

IN WITNESS WHEREOF, the Declarant has executed this Restatement and Amendment of Restrictive Covenants under seal, the day and year below subscribed.

DECLARANT

Walter J. Marsh, III (SEAL)  
Walter J. Marsh, III

Virginia B. Marsh (SEAL)  
Virginia B. Marsh

STATE OF NORTH CAROLINA  
COUNTY OF DARE

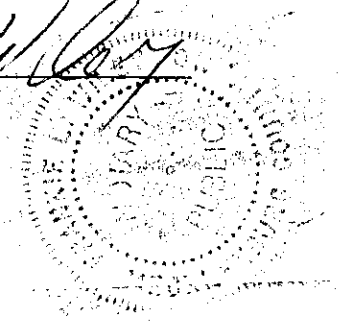
I, a Notary Public of the County and state aforesaid, certify that Walter J. Marsh, III and wife, Virginia B. Marsh personally came before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 8 day of ~~November~~ <sup>Dec</sup>, 2000.

Frankie L. Wiley  
Notary Public

My commission expires:

Notary Public, Mecklenburg County, NC  
My Commission Expires August 3, 2002



NORTH CAROLINA  
DARE COUNTY

The foregoing certificate of a Notary Public of Mecklenburg Co., NC is certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.

Barbara M. Gray, Register of Deeds

By Vanessa McMason Assistant Register of Deeds



**CERTIFICATE OF CONSENT**

THIS CERTIFICATE OF CONSENT, made and entered into this 29<sup>th</sup> day of November, 2000 by and between Christopher Keenan, (the "Grantor") of 4012 Devon Drive, Chesapeake, VA 23321 hereinafter referred to as the "Owner" of that parcel of property situated in the Town of Kitty Hawk, Atlantic Township, Dare County and more particularly described as Lot 6 of Harbour Bay Subdivision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").


**RECITALS**

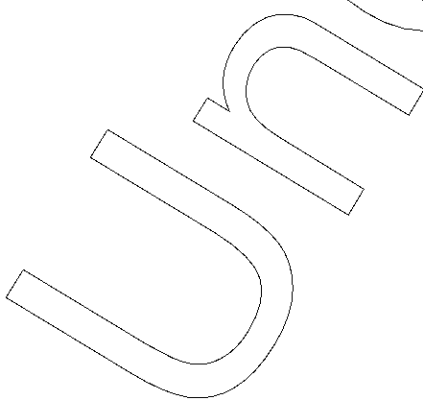
1. Owner acquired their Property by Deed recorded in Deed Book 1353, at Page 116 in the Office of the Public Registry of Dare County, North Carolina subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set her hand and seal the day and year below subscribed.

**GRANTOR**

 (SEAL)  
Christopher Keenan





VIRGINIA  
CITY OF Chesapeake COUNTY OF Virginia

I, a Notary Public of the County and State aforesaid, certify that Christopher Keenan personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 29<sup>th</sup> day of November, 2000

Deety Gibson  
Notary Public

My commission expires: 2-28-2001

Unofficial Copy



### CERTIFICATE OF CONSENT

THIS CERTIFICATE OF CONSENT, made and entered into this 21 day of November, 2000 by and between Stephen Abrams and wife, Angela Abrams (the "Grantor") of 310 Duck Road, Southern Shores, NC 27949 hereinafter referred to as the "Owner" of that parcel of property situated in the Town of Kitty Hawk, Atlantic Township, Dare County and more particularly described as Lot 18 of Harbour Bay Subdivision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").

#### RECITALS

1. Owner acquired their Property by Deed recorded in Deed Book 1322, at Page 332 in the Office of the Public Registry of Dare County, North Carolina subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal the day and year below subscribed.

#### GRANTOR

 (SEAL)  
Stephen Abrams

 (SEAL)  
Angela Abrams



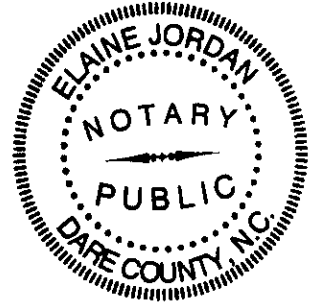
NORTH CAROLINA  
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Stephen Abrams and wife, Angela Abrams personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 23<sup>rd</sup> day of January, 2000

Elaine Jordan  
Notary Public

My commission expires: 12/03/05



Unofficial



### CERTIFICATE OF CONSENT

THIS CERTIFICATE OF CONSENT, made and entered into this 21 day of November, 2000 by and between Nancy G. Wren, (the "Grantor") of 127 Bennetts Creek Landing, Suffolk, VA 23435 hereinafter referred to as the "Owner" of that parcel of property situated in the Town of Kitty Hawk, Atlantic Township, Dare County and more particularly described as Lot 17 of Harbour Bay Subdivision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").

#### RECITALS

1. Owner acquired their Property by Deed recorded in Deed Book 1334, at Page 22 in the Office of the Public Registry of Dare County, North Carolina subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal the day and year below subscribed.

GRANTOR

Nancy G. Wren (SEAL)  
Nancy G. Wren



VIRGINIA  
CITY \_\_\_\_\_ COUNTY OF \_\_\_\_\_

I, a Notary Public of the County and State aforesaid, certify that Nancy G. Wren personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 28 day of NOV., 2000

Amy Z. Demeter  
Notary Public

My commission expires: 3.31.02

I was commissioned a notary public as Amy Z. Gordon

Unofficial Copy



**CERTIFICATE OF CONSENT**

THIS CERTIFICATE OF CONSENT, made and entered into this 27 day of November, 2000 by and between Paul D. Burns, (the "Grantor") of 11421 Old Lewiston Road, Richmond, VA 23236 hereinafter referred to as the "Owner" of that parcel of property situated in the Town of Kitty Hawk, Atlantic Township, Dare County and more particularly described as Lot 20 of Harbour Bay Subdivision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").

**RECITALS**

1. Owner acquired their Property by Deed recorded in Deed Book 1267, at Page 381 in the Office of the Public Registry of Dare County, North Carolina subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal the day and year below subscribed.

**GRANTOR**

*Paul D Burns* (SEAL)

Paul D. Burns





VIRGINIA  
CITY Richmond COUNTY OF Hesterfield

I, a Notary Public of the County and State aforesaid, certify that Paul D. Burns personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 27th day of Nov, 2000

Darius W. Tyre  
Notary Public

My commission expires: **My Commission Expires April 30, 2002**

Unofficial Copy



**CERTIFICATE OF CONSENT**

<sup>BD</sup>  
THIS CERTIFICATE OF CONSENT, made and entered into this 21 day of November, 2000 by and between Barbara Dyeam, (the "Grantor") of 329 Baltustrol Circle, Roslyn, NY 11576 hereinafter referred to as the "Owner" of that parcel of property situated in the Town of Kitty Hawk, Atlantic Township, Dare County and more particularly described as Lot 15 of Harbour Bay Subdivision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").

**RECITALS**

1. Owner acquired their Property by Deed recorded in Deed Book 1295, at Page 818 in the Office of the Public Registry of Dare County, North Carolina subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal the day and year below subscribed.

**GRANTOR**

*Barbara Dyeam* (SEAL)  
Barbara Dyeam  
<sup>BD</sup>



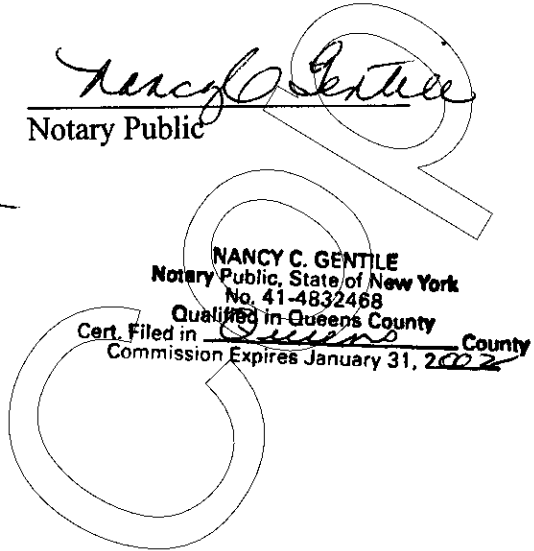
NEW YORK  
COUNTY OF Queens

I, a Notary Public of the County and State aforesaid, certify that Barbara Dyeam personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this first day of Dec 2000

Nancy C. Gentile  
Notary Public

My commission expires: Jan 31, 2002



UNOFFICIAL

**CERTIFICATE OF CONSENT**

THIS CERTIFICATE OF CONSENT, made and entered into this 21 day of January, 2001 by and between Christopher R. Hess and Tricia L. Joseph, (the "Grantor") of 104 Harbour Bay Drive, Kitty Hawk, North Carolina 27949 hereinafter referred to as the "Owner" of that parcel of property situated in the Town of Kitty Hawk, Atlantic Township, Dare County and more particularly described as Lot 26 of Harbour Bay Subdivision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").

**RECITALS**

1. Owner acquired their Property by Deed recorded in Deed Book 1229, at Page 268 in the Office of the Public Registry of Dare County, North Carolina subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 and executed by Declarant on December 8, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal the day and year below subscribed.

**GRANTOR**

Christopher R. Hess (SEAL)  
Christopher R. Hess

Tricia L. Joseph (SEAL)  
Tricia L. Joseph





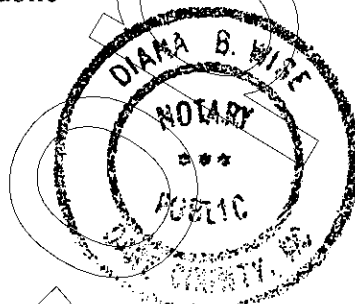
STATE OF NORTH CAROLINA  
COUNTY/~~CITY~~ OF Dare

I, a Notary Public of the County and State aforesaid, certify that Christopher R. Hess personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 19th day of January, 2001.

*Dianna B. Wise*  
Notary Public

My commission expires: May 17, 2002



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

I, a Notary Public of the County and State aforesaid, certify that Tricia L. Joseph personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 19th day of January, 2001.

*Dianna B. Wise*  
Notary Public

My commission expires: May 17, 2002



Unofficial



**CERTIFICATE OF CONSENT**

THIS CERTIFICATE OF CONSENT, made and entered into this 21 day of November, 2000 by and between Jesse Samuel Greenough, Jr., (the "Grantor") of 109 Sunny's Lane, Kitty Hawk, NC 27949 "Owner" of that parcel of property situated in the Town of Kitty Hawk, Atlantic Township, Dare County and more particularly described as Lot 10 of Harbour Bay Subdivision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").

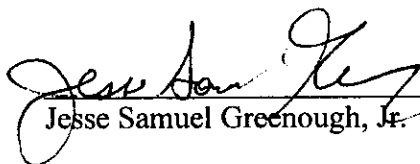
**RECITALS**

1. Owner acquired their Property by Deed recorded in Deed Book 1345, at Page 65 in the Office of the Public Registry of Dare County, North Carolina subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal the day and year below subscribed.

**GRANTOR**

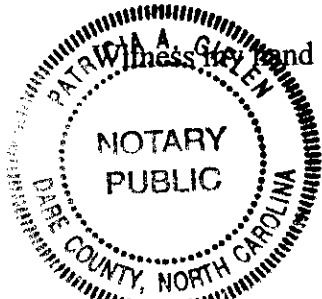
 (SEAL)  
 Jesse Samuel Greenough, Jr.



NORTH CAROLINA  
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Jesse Samuel Greenough, Jr., personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 7 day of Jan, 2000



Patricia A. Gleen  
Notary Public

My commission expires: 9-27-05

Unofficial Copy



**CERTIFICATE OF CONSENT**

THIS CERTIFICATE OF CONSENT, made and entered into this 24 day of November, 2000 by and between Jesse Samuel Greenough, Jr., (the "Grantor") of 109 Sunny's Lane, Kitty Hawk, NC 27949 "Owner" of that parcel of property situated in the Town of Kitty Hawk, Atlantic Township, Dare County and more particularly described as Lot 10 of Harbour Bay Subdivision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").

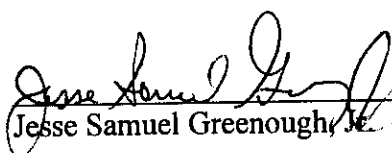
**RECITALS**

1. Owner acquired their Property by Deed recorded in Deed Book 1345, at Page 65 in the Office of the Public Registry of Dare County, North Carolina subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal the day and year below subscribed.

**GRANTOR**

 (SEAL)  
Jesse Samuel Greenough, Jr.

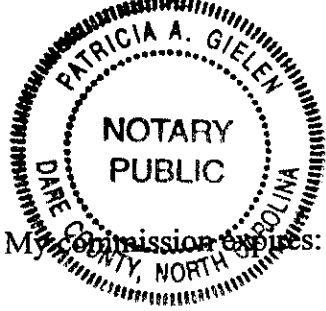




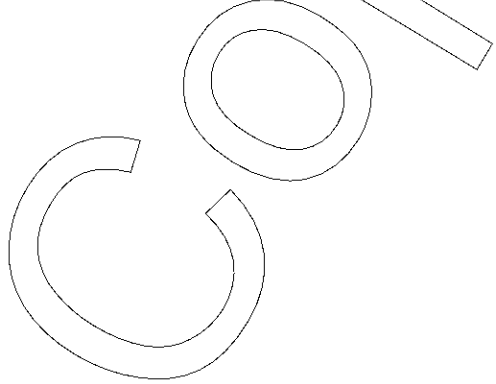
NORTH CAROLINA  
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Jesse Samuel Greenough, Jr., personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 4 day of Jan, 2000



*Patricia A. Gieles*  
Notary Public





## CERTIFICATE OF CONSENT

THIS CERTIFICATE OF CONSENT, made and entered into this 21 day of November, 2000 by and between Sharon L. Bonville (the "Grantor") of 6616 Comet Circle, Apartment 109, Springfield, VA 22150 "Owner" of that parcel of property situated in the Town of Kitty Hawk, Atlantic Township, Dare County and more particularly described as Lot 13 of Harbour Bay Subdivision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").

### RECITALS

1. Owner acquired their Property by Deed recorded in Deed Book 1343, at Page 115 in the Office of the Public Registry of Dare County, North Carolina subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal the day and year below subscribed.

GRANTOR

  
Sharon L. Bonville (SEAL)



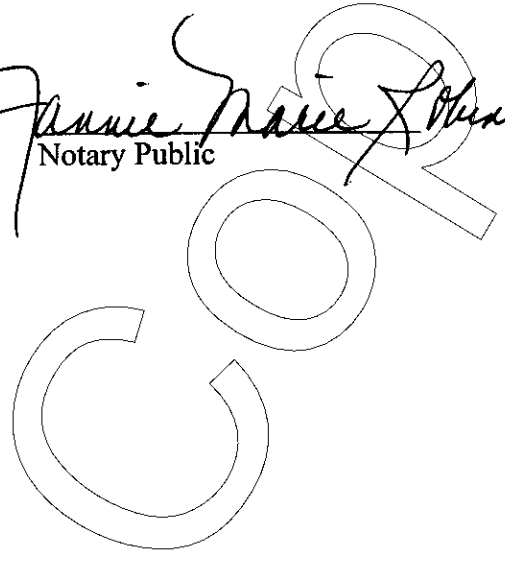
~~VIRGINIA~~ *DC*  
CITY \_\_\_\_\_ COUNTY \_\_\_\_\_

I, a Notary Public of the County and State aforesaid, certify that Sharon L. Bonville personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this *25th* day of *Jan.* *2001*

*Fannie Marie Thomas*  
Notary Public

My commission expires: *10/31/01*



Unofficial



### CERTIFICATE OF CONSENT

THIS CERTIFICATE OF CONSENT, made and entered into this 21 day of November, 2000 by and between Steven C. Rickard and wife, Lauren Rickard, (the "Grantor") of 1509 Quail Lane, Kill Devil Hills, NC 27948 hereinafter referred to as the "Owner" of that parcel of property situated in the Town of Kitty Hawk, Atlantic Township, Dare County and more particularly described as Lot 22 of Harbour Bay Subdivision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").


#### RECITALS


1. Owner acquired their Property by Deed recorded in Deed Book 1273, at Page 757 in the Office of the Public Registry of Dare County, North Carolina subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal the day and year below subscribed.

GRANTOR

  
\_\_\_\_\_  
Steven C. Rickard (SEAL)

  
\_\_\_\_\_  
Lauren Rickard (SEAL)



NORTH CAROLINA  
DARE COUNTY

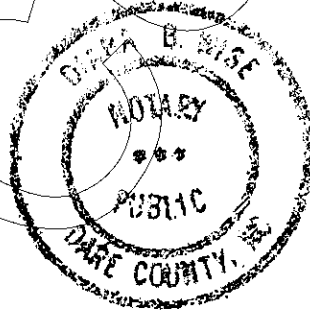
I, a Notary Public of the County and State aforesaid, certify that Steven C. Rickard and wife, Lauren Rickard personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 2<sup>nd</sup> day of February, 2000

Ariana B. Wise  
Notary Public

My commission expires:

May 17, 2002



Unofficial



**CERTIFICATE OF CONSENT**

THIS CERTIFICATE OF CONSENT, made and entered into this 21 day of November, 2000 by and between Richard Sloan and wife, Phyllis Sloan (the "Grantor") of 12506 Bay Hill Drive, Chester VA 23836 hereinafter referred to as the "Owner" of that parcel of property situated in the Town of Kitty Hawk, Atlantic Township, Dare County and more particularly described as Lot 9 of Harbour Bay Subdivision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").


**RECITALS**

1. Owner acquired their Property by Deed recorded in Deed Book 1319, at Page 141 in the Office of the Public Registry of Dare County, North Carolina subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal the day and year below subscribed.

**GRANTOR**

 (SEAL)  
Richard Sloan

 (SEAL)  
Phyllis Sloan



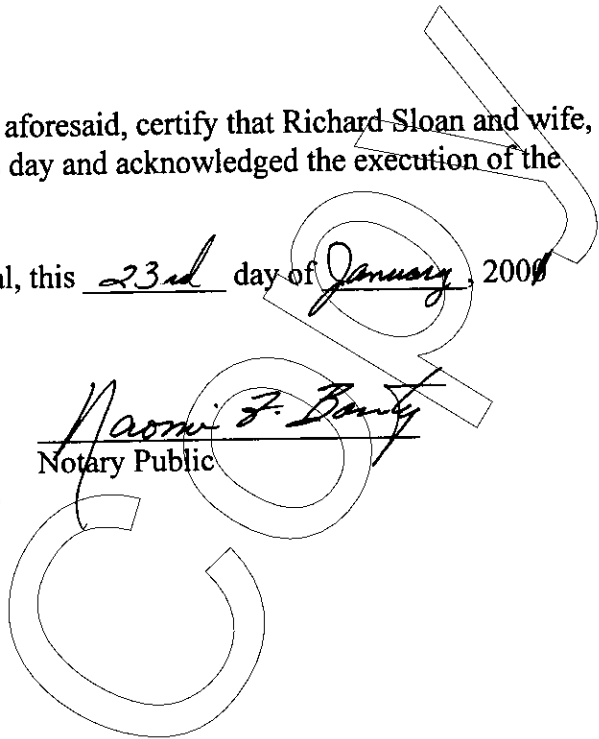
VIRGINIA  
CITY Petersburg COUNTY \_\_\_\_\_

I, a Notary Public of the County and State aforesaid, certify that Richard Sloan and wife, Phyllis Sloan personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 23rd day of January, 2000

Naomi F. Bandy  
Notary Public

My commission expires: April 30, 2001





**CERTIFICATE OF CONSENT**

THIS CERTIFICATE OF CONSENT, made and entered into this 21 day of November, 2000 by and between Frederick A. Brightman and wife, Lynn B. Brightman, (the "Grantor") 250 Columbine Drive, Warrenton, CO 63383 hereinafter referred to as the "Owner" of that parcel of property situated in the Town of Kitty Hawk, Atlantic Township, Dare County and more particularly described as Lot 5 of Harbour Bay Subdvision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").

**RECITALS**

1. Owner acquired their Property by Deed recorded in Deed Book 1347, at Page 397 in the Office of the Public Registry of Dare County, North Carolina subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal the day and year below subscribed.

**GRANTOR**

*Frederick A. Brightman* (SEAL)  
Frederick A. Brightman

*Lynn B. Brightman* (SEAL)  
Lynn B. Brightman





STATE OF MISSOURI

~~COLORADO~~

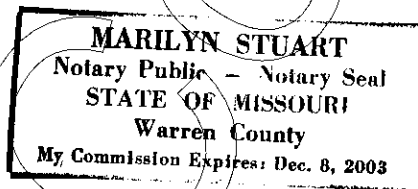
COUNTY OF WARREN

I, a Notary Public of the County and State aforesaid, certify that Frederick A. Brightman and wife, Lynn B. Brightman personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 26TH day of JANUARY, 2000

*Marilyn Stuart*  
Notary Public

My commission expires: 12-08-03



Unofficial



### CERTIFICATE OF CONSENT

THIS CERTIFICATE OF CONSENT, made and entered into this 22<sup>nd</sup> day of November, 2000 by and between Walter J. Marsh and wife, Virginia B. Marsh, (the "Grantor") of P.O. Box 2854, Kitty Hawk, NC 27949, Dare County and more particularly described as Lots: 1,3,4,7,8,11,14,19,23,24,25,27,28,29,30,31,32,33 and 35 of Harbour Bay Subdivision as recorded in Plat Cabinet E, Slide 136 in the Public Registry of Dare County, North Carolina (the "Property").

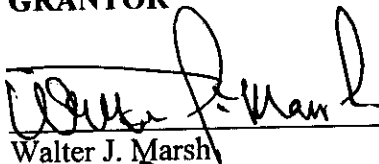
#### RECITALS

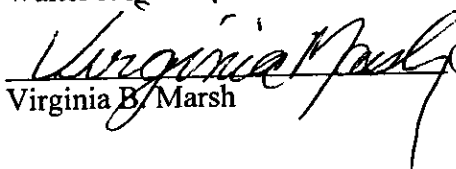
1. Owner's Property is subject to that Declaration of Restrictive Covenants for the Protection of Harbour Bay Subdivision dated March 26, 1999 filed by Walter J. Marsh and wife, Virginia B. Marsh, as "Declarant" and recorded in Book 1255 at Page 196 in the Public Registry of Dare County, North Carolina (the "Initial Filing");
2. That subsequent to the Initial Filing, there were errors and omissions discovered in the Initial Filing which were inconsistent and incompatible with the Planned Community Act as codified by Chapter 47F of the North Carolina General Statutes (the "Act") and with the developmental intentions of the Declarant;
3. That subsequent to the Initial Filing the Declarant has proposed a joint undertaking with the Town of Kitty Hawk to dedicate and have constructed a community pier with sound access and amenities which enabling provisions would require the Declarant to convey a portion of that Property previously designated as Common Area on the Subdivision plat of Harbour Bay to the Town of Kitty Hawk;
4. That the Initial Filing has been corrected and amended by that Restatement and Amendment of Declaration of Restrictive Covenants dated November 21, 2000 (the "Restatement") to which a copy of this Certificate of Consent shall be annexed thereto as an exhibit and filed with the Restatement in the Office of the Public Registry of Dare County, North Carolina upon Declarant receiving Consents of not less than 80% of the Owners of lots in Harbour Bay Subdivision;
5. Owner is in agreement to the Initial Filing being amended and superceded by the Restatement.

NOW THEREFORE, in consideration of the mutual covenants and conditions as stated in the recitals and provisions of the Restatement and pursuant to the provisions of 47F-2-117 and 47F-3-112 of the Act, the Grantor hereby consents to Declarant filing the Restatement, the provisions of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal the day and year below subscribed.

GRANTOR

 (SEAL)  
Walter J. Marsh

 (SEAL)  
Virginia B. Marsh



NORTH CAROLINA  
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Walter J. Marsh and wife, Virginia B. Marsh personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 8 day of Dec, 2000

*Frankie A. Wiley*  
Notary Public

My commission expires:

Notary Public, Mecklenburg County, NC  
My Commission Expires August 3, 2002

Unofficial