

DECLARATION OF RESTRICTIVE COVENANTS

KITTY HAWK LANDING

SECTIONS 1 AND 2

THIS DECLARATION, Made this 2nd day of June, 1971,  
by B & B ASSOCIATES, a North Carolina limited partnership, hereinafter  
referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of all of the real property set  
forth and described on those certain plats (hereinafter called "the plat"),  
entitled Kitty Hawk Landing Section 1 and 2 (excluding therefrom lots 1-4  
inclusive) and which plats are recorded or intended to be recorded among  
the Land Records of Dare County, North Carolina; and

WHEREAS, all of the real property described in the plat comprises  
a part of the Kitty Hawk Landing general subdivision (hereinafter called  
"Subdivision"); and

WHEREAS, Declarant is about to sell and convey lots shown on the  
plat and before doing so desires to subject them to certain mutually  
beneficial restrictive covenants, conditions and charges (hereinafter  
collectively referred to as "Restrictions") under a general plan or  
scheme of improvement for the benefit of said lots and all future owners  
thereof;

NOW, THEREFORE, Declarant hereby declares that all of said lots  
and such additional lots as Declarant may hereafter include under these  
restrictions, are held and shall be held, conveyed, encumbered, leased,  
rented, used, occupied and improved subject to the following restrictions,  
all of which are declared and agreed to be in furtherance of a plan for  
the subdivision, improvement and sale of said lots and are established

and agreed upon for the purposes of enhancing and protecting the desirability of the property described in the plat and of the subdivision as a whole. All of the restrictions shall run with the land and shall be binding upon Declarant and upon all other parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof, subject to such restrictions.

1. Applicability

These restrictions shall apply to subdivided numbered lots only and are specifically excluded from application to other parcels and lands owned by Declarant, which parcels and lands are intended for commercial, multi-dwelling, recreational, airfield and related facilities.

2. Term

These restrictions shall affect and run with the land and shall exist and be binding upon all parties and persons claiming under them until January 1, 1998, after which the same shall be extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of the lots subject thereto has been recorded, agreeing to change the covenants in whole or in part; provided, however, that at any time before January 1, 1985 these restrictions may be amended by a vote of the then record owners of 2/3 of such lots. Notwithstanding any other provisions hereof, the Declarant reserves to itself and its successors the right to revoke, or modify, at any time prior to the sale of any lot within a section, all or any of these restrictions, and further to abandon or vacate any of the streets, parks, recreational facilities and any other amenities shown on the recorded plats, provided, however, that the Declarant will not prevent access to or installation of utilities to lots in any other section of the subdivision.

3. Additional Lands

The Declarant and its successors shall have the right to bring additional lands into the subdivision and to extend these restrictions to include such lands. Such additions, if made, shall become subject to all provisions of these restrictions.

4. Environmental Control Committee

(a) All plans and specifications for any structure or improvement whatsoever ("improvement" as herein stated shall include but is not limited to, any building, structure, fence, gate, pier, jetty, bulkhead or wall, or any additions, modifications or remodeling thereof) to be erected on or moved upon any lot, and the proposed location thereof on any lot or lots shall be subject to and require the approval, in writing, before any such work is commenced, of the Environmental Control Committee (hereinafter called "Committee").

(b) The Committee shall be composed of three (3) members to be appointed by the Declarant. Committee members shall be subject to removal by Declarant and any vacancies from time to time existing shall be filled by appointment of Declarant, or in the event of Declarant's failure to so appoint within two (2) months after any such vacancy, then by the Board of Directors of a corporation to be formed entitled "Kitty Hawk Landing Association, Inc." (hereinafter called "Association"); provided, however, that at any time hereafter the Declarant may, at its sole option, relinquish to the Board of Directors of the Association the power of appointment and removal reserved herein to Declarant.

(c) There shall be submitted to the Committee a building application on forms approved by Declarant, together with two complete detailed sets of plans and specifications for any proposed improvement, such plans shall include plot plans showing the location on the lot of the improvements together with elevations showing the proposed exterior construction material, color scheme for roofs and exteriors and proposed landscape plan. A filing fee of \$30.00 shall accompany the submission of such application and plans to defray Committee expenses. No additional fee shall be required for re-submission of plans revised in accordance with Committee recommendations.

(d) In the event that the Committee shall fail to approve or disapprove such plans within sixty (60) days after the receipt thereof by

the Committee, or in any event if no suit to enjoin the improvement has been commenced prior to the completion thereof, approval will not be required and this provision shall be deemed to have been fully complied with. One set of said plans, specifications and details shall be returned to the persons submitting the same and the other copy shall be retained by the Committee for its permanent files.

(e) The Committee shall have the right to disapprove any plans for improvements in the event, in the sole judgment of the Committee, they are not in accordance with all of the provisions of these Restrictions, or if the design, exterior material and color of the proposed improvements is not in harmony with the general surroundings of such lot, adjacent buildings or the subdivision generally, or if the plans submitted are incomplete. The decisions of the Committee shall be final.

(f) Neither the Committee nor any architect thereof shall be responsible for any defects in any plans or specifications or for any revisions thereof made in accordance with the foregoing provisions, nor for any structural or other defects for any work done according to such plans and specifications.

##### 5. Building and Use Limitations

(a) No numbered lot shall be used except for residential purposes. No structure shall be erected, placed or permitted to remain on any numbered lot other than one detached single-family residence dwelling and out-buildings constructed in connection with the residence, such as a private garage.

(b) Every residence dwelling constructed on a lot shall contain a minimum of 864 square feet of fully enclosed floor area devoted to living purposes (exclusive of roofed or un-roofed porches, terraces, garages, carports, and other out-buildings).

(c) No residence or out-building shall be located nearer than twenty-five (25) feet from the front property line, eight (8) feet from

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any side line, and thirty-five (35) feet from the rear line of each lot, subject, however, to possible more restrictive requirements which may be imposed from time to time by the public authorities of Dare County, North Carolina. A corner lot shall be deemed to have frontage on both streets. Where a person utilizes two or more lots as a single home site then the side lot line restrictions shall apply with respect to the exterior side lines of such combined lots.

(d) No outside toilet shall be constructed, installed or used on any lot. All structures intended for occupancy must be equipped with inside plumbing facilities and all sanitary plumbing and disposal of waste shall conform with the minimum requirements and be approved by the Health Department of Dare County, North Carolina. No individual wells shall be placed on said properties so long as the property is being supplied by a central water system. Trash, garbage, or other waste material shall be kept in sanitary containers. No trash, garbage or other refuse shall be dumped or stored or accumulated on any lot, thrown into or left in or on the shore line of any waterway in the section or subdivision. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted. This provision shall not apply to outdoor barbeque grills or similar devices used for preparation of food.

(e) All structures shall be completed on the exterior within six (6) months from the start of construction. No residence shall be occupied until the same has been substantially completed in accordance with the plans and specifications. No structure of a temporary nature, trailer, basement, tent, shack, garage, barn or other out-building shall be occupied or stored on any residential lot either temporarily or permanently.

(f) No animals or livestock of any description, except the usual household pets, shall be kept on any lot. No stripped-down, partially wrecked or junked motor vehicle or a sizeable part thereof shall be permitted to be parked on any street or common area of the section or subdivision or on any lot.

(g) All signs, billboards or advertising structures of any kind are prohibited other than a sign not in excess of one (1) square foot identifying the name and address of the owner of the lot, except upon application to and written permission from the Committee.

(h) Every tank for storage of fuel installed outside any building shall be screened to the satisfaction of the Committee. All lots, whether occupied or unoccupied, and any improvements placed thereon shall at all times be maintained in such manner so as to prevent their becoming unsightly by reason of unattractive growth of vegetation on such lot or the accumulation of rubbish and debris thereon. No noxious, offensive or illegal activities shall be carried on on any lot, nor shall anything be done on any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood. Any dwelling on any lot in the subdivision which may be destroyed in whole or in part by fire must be rebuilt, or all debris removed and the lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall any debris remain longer than sixty (60) days.

(i) No living tree over six (6) inches in diameter at its base shall be removed from any numbered lot without the written consent of the Committee.

(j) All residential structures shall be constructed so that the living quarters shall have a minimum elevation of seven (7) feet above mean sea level.

(k) The maintenance of the shore line and/or bulkheads adjacent to waterways shall be the responsibility of each individual lot owner and the Declarant assumes no responsibility for the maintenance thereof.

(l) No original lot or group of lots may be re-subdivided without the written consent of the Declarant.

(m) No pier shall extend into any waterway for a distance greater than ten (10) feet from the mean water level of such lot. No lot owner shall fill any part of an adjacent waterway except to restore or repair any damage that may have been caused thereto.

6. Variances

The Committee may allow reasonable variances or adjustments of these regulations in order to overcome practical defects and prevent unnecessary hardships in the application of these provisions, provided such is done in conformity with the intent and purposes hereof, and provided also that in every instance such variances or adjustments will not be materially detrimental or injurious to other properties or improvements in the neighborhood, the section or the subdivision.

7. Easements

The Declarant reserves for itself, its successors and assigns (including utility companies and the Association), for purposes incident to its development of the subdivision, the following easements and rights of way:

(a) All waterways shall be easement areas for drainage, navigation and recreational use.

(b) There shall be an easement five (5) feet in width along the side property and ten (10) feet in width along the front and rear property line of each lot and/or as noted on the plat for the installation and maintenance of public utilities.

(c) For lots abutting the airstrip, no structure or tree shall be planted on such lot within twenty-five (25) feet of the boundary line of the airstrip, without consent of the Committee.

8. Ownership, Use and Enjoyment of Parks and Recreational Amenities

(a) Each and every park, recreational facility, waterway and other amenity designated by Declarant (hereinafter termed "Common Properties") within or outside of the subdivision is a private park facility or amenity and neither Declarant's execution or recording of the plat nor any other act of Declarant, except as expressly directed, shall be construed as a dedication to the public of such Common Properties. An easement for the use and enjoyment for each of said areas designated as "Common Properties" is reserved to the Declarant and its successors and the persons who are from time to time members of the Kitty Hawk Landing Association, Inc., to the residents, tenants

and occupants of any multi-family residential building, guesthouse, inn or hotel facilities erected within the boundaries of the Subdivision, and to such other classifications of persons as may be designated by the Declarant and its successors. The Declarant may retain legal title to the "Common Properties" until such time as, in the opinion of the Declarant, the Association is able to maintain the same and to meet any existing obligations which may be a lien thereon. Notwithstanding any other provision hereof the Declarant hereby covenants for itself, its successors and assigns that it shall convey the said properties to the Association not later than January 1, 1985. At the time of such conveyance, title to the land and improvements, if any, pass to the Association subject to the provisions hereof and to such encumbrances as may be placed upon said properties for the purposes of the Association. The Declarant shall have the right either to convey to the Association title to the airfield and related facilities, retain title thereto and grant a franchise for operation of the same or operate the airfield in such other manner as it may desire.

(b) The rights and enjoyment of the Common Properties by the members of the Association shall be subject to the following:

(1) The right of the Declarant and of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to encumber said properties. The members' rights in the Common Properties shall be subordinate to any deed of trust given by the Declarant or Association as security for funds borrowed for said improvements. Any indebtedness which shall be created for the purpose of making improvements to the Common Properties shall be an obligation of the Association. In the event of a default upon any such indebtedness, the holders of the notes or the Trustee under the deed of trust shall have all of the rights afforded under the deed of trust or security agreement under the laws of the State of North Carolina, including the right after taking possession of the Common Properties to charge admission and other fees as a condition to continue enjoyment by the members, and if necessary to offer the use of such properties to the general public.



(2) The right of the Association, as provided in its Articles and Bylaws, to establish such reasonable rules and regulations governing the use of all Common Properties and the facilities therein including the right to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

(3) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties in addition to membership fees.

(4) No watercraft shall exceed a speed of five (5) nautical miles per hour in any waterway.

9. Kitty Hawk Landing Association, Inc.

(a) Every person or entity who hereafter acquires title, legal or equitable, to any lot in the subdivision shall become a member of the Kitty Hawk Landing Association, Inc., a North Carolina non-profit corporation, provided, however, that any person or entity who holds such interest merely as security for the performance of an obligation to pay money shall not be a member. The Association shall have one class of voting membership. The owner or owners of each lot shall have one vote for each lot owned, which vote may be exercised in person or by proxy.

(b) Each subsequent owner, by acceptance of a conveyance or acquiring title to a lot within the subdivision, whether or not it shall be expressed in any such deed or conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien on the property against which each such assessment is made, and shall also be the personal obligation of the person who was the owner of the property at the time the assessment fell due.

(c) The assessment levied by the Association shall be used by the Association exclusively for the purposes of promoting the recreation, health

safety and welfare of the residents of the subdivision including the maintenance and improvement of interior streets and roads, of the Common Properties, payment of taxes and insurance thereon, repair, replacement and additions thereto and for the cost of labor, equipment, materials, management and supervision thereof. In the event that the Association at any time fails to properly maintain such Common Properties, the Declarant, its successors and assigns may in its sole discretion enter upon and make any and all such repairs to any such Common Properties which it deems necessary and proper, and may charge the Association for all costs incurred by it for such purposes, provided, however, that Declarant shall be under no obligation to take any such action.

(d) The annual assessment shall be Twenty-Five Dollars (\$25.00) for each lot subject to change, however, from time to time by the Board of Directors of the Association after consideration of current maintenance needs and future needs of the Association; provided, however, that no such charge shall ever be made against, or payable by, the Declarant, the Association itself, or any corporation or corporations that may be created to acquire title to, and operate, the water facilities or airstrip serving the subdivision. In addition to the annual assessments, the Association may levy in any assessment year a special assessment for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided any such assessment shall have the affirmative vote of two-thirds of all voting members voting in person or by proxy at a meeting called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

(1) The annual assessments provided for herein shall commence on the first day of May, 1973. The assessment for each succeeding year shall become due and payable on the first day of May each year and notice thereof shall be sent on or about the first day of April of each year. No adjustments or prorations of assessments shall be made by the Association. The due date

for any special assessment shall be fixed in the Resolutions authorizing such assessment.

(2) If any such charge shall not be paid when due it shall bear interest from the date of delinquency at the rate of 8% per annum, or at the highest legal rate in the state of North Carolina at that time, the Association may publish the name of the delinquent member in a list of delinquent members or by any other means of publication, and the Association may file a notice that it is the owner of a lien to secure payment for the unpaid charge plus costs and reasonable attorney's fees, which lien shall encumber the lot or lots in respect to which the charge shall have been made, and which notice shall be filed in the Office of the Clerk of Court of Dare County, North Carolina. If the assessment is not paid within six months from the time it becomes due, the Association may bring an action at law against the owner personally obligated to pay the same within the statutory period or may foreclose the lien against the property. There shall be added to such assessment, the cost of preparing and filing the action and in the event that judgment is obtained, interest on the total amount due, reasonable attorneys' fees to be fixed by the Court and costs of the action.

(3) The Association shall, upon demand, at any time furnish a Certificate in writing signed by an officer of the Association certifying that the charges on a specified lot have been paid or that certain charges against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these Certificates. Such Certificates shall be conclusive evidence of payment of any charges therein stated to have been paid.

(4) The lien of a mortgage or deed of trust placed upon any lot for the purpose of permanent financing and/or constructing a residence or other improvement thereon shall be, from the date of recordation, superior to any and all subsequent liens and assessments provided for herein.

#### 10. Charges for Water Service

Every owner (legal or equitable) of a lot in the subdivision shall be conclusively presumed to have covenanted, by acquiring title to such lot,

regardless of the means of such title acquisition, to pay a water availability charge commencing upon the availability of water to serve such lot in the sum of Three Dollars (\$3.00) per month per lot. At such time as the owner of each lot shall elect to have water service connected, such owner shall pay a connection charge of Two Hundred Fifty Dollars (\$250.00) and thereafter he shall pay for all water consumed, subject to a minimum charge at the rates then in effect. The aforementioned water availability charge, connection charge, water consumption charge and minimum charge may be adjusted equitably from time to time, subject, however, to approval of an empowered public authority of North Carolina and if such empowered public authority shall then exist.

The provisions of paragraph 10 shall not at any time hereafter be amended or revoked by owners of lots as provided in paragraph 2 hereof.

11. Enforcement

Enforcement of these covenants and restrictions by the Declarant, Association or any lot owners shall be by proceeding at law or equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12. Notices

Any notice required to be sent to any member or 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 a member or owner on the records of the Association at the time of such mailing.

13. Grantee's Acceptance

The Grantee of any lot subject to these restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof whether from the Declarant or a subsequent owner of such lot shall accept such deed or contract upon and subject to each and all of these

restrictions and the agreements herein contained. Each such grantee agrees by such acceptance, to assume, as against Declarant, its successors or assigns all risks and hazards of ownership or occupancy attendant to such lot, or improvements thereof, including but not limited to its elevation and proximity to waterways.

14. Severability

Invalidation of any one of these covenants or restrictions by Judgment or Order of Court shall in nowise affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, B & B Associates, the Declarant herein, has caused this Declaration to be signed for it and in its behalf by William W. Beckett and Alvis G. Beacham, its General Partners, on the day and year first above written.

WITNESS:

Gene Huess  
GENE HUIESS

B. & B. ASSOCIATES

By: William W. Beckett (SEAL)  
William W. Beckett

Bonny F. Bonner

By: Alvis G. Beacham (SEAL)  
Alvis G. Beacham

General Partners

STATE OF MARYLAND

COUNTY OF PRINCE GEORGE'S, SS:

On this the 2nd day of June, 1971, before me, the undersigned officer, personally appeared William W. Beckett, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

My commission expires: July 1, 1974

Gene Huess  
Notary Public, Md.

GENE HUIESS  
Notary Public, Md.

STATE OF NORTH CAROLINA

COUNTY OF DARE, SS:

On this the 14th day of June, 1971, before me, the undersigned officer, personally appeared Alvis G. Beacham, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

Bonny F. Bonner  
Notary Public, N.C.

My commission expires:  
June 21, 1975

NORTH CAROLINA  
DARE COUNTY

The foregoing certificates of Gene Huiess, a Notary Public of the County of Prince George's, State of Maryland, and Bonny F. Bonner, a Notary Public of Dare County, North Carolina, are certified to be correct.

PRESENTED for registration this 13th day of June, 1971, at 1-10 o'clock P.M., and recorded in this office in Book 174, Page 640.

Melvin R. Daniels  
REGISTER OF DEEDS

BY: \_\_\_\_\_  
ASSISTANT REGISTER OF DEEDS