

Prepared by and return to:  
John G. Gaw, Jr., Esquire  
Rose Harrison & Gilreath, P.C.  
PO Box 405  
Kill Devil Hills, NC 27948

**STATE OF NORTH CAROLINA**  
**COUNTY OF DARE**

**SEA DUNES**  
**AMENDMENTS TO DECLARATION**  
**OF COVENANTS AND RESTRICTIONS**

Whereas, R. Guy Mayo, is the fee simple owner of that Sea Dunes Homeowners Association Inc. owner of the Common Areas and individual owners of the town homes comprising that certain tract or parcel of land located in Atlantic Township, Dare County, North Carolina and more particularly described as follows:

Beginning at a concrete monument located in and on the eastern right of way or margin of U.S. 158 Bypass, said concrete monument having North Carolina grid coordinates X = 2,977,481.642 Y = 858,549.573, said concrete monument also marking the southwest corner of property now or formerly owned as R. V.'s Restaurant property; thence running north 37 deg. 28 min. 12 sec. east 846.29 feet to a concrete monument in and on the western right of way or margin of U.S. 158 Business and a corner; thence turning and running along and with said western right of way or margin of U.S. 158 Business and a corner; thence turning and running along and with western right of way or margin of U.S. Highway 158 Business south 30 deg. 26 min. 40 sec. east 123.00 feet to an iron pin and corner; thence turning and running south 43 deg. 00 min. 00 sec. west 252.95 feet to an iron pin; thence turning and running south 30 deg. 26 min. 40 sec. east 274.00 feet to an iron pin and a corner; thence turning and running south 59 deg. 33 min. 20 sec. west 197.40

feet to an iron pin and a corner; thence turning and running north 33 deg. 26 min. 40 sec. west 132.46 feet to an iron pin; thence running north 59 deg. 00 sec. 94.51 feet to an iron pin and a corner; thence turning running south 37 deg. 28 min. 12 sec. west 25.31 feet to an iron pin; thence following along and with a curve in the eastern right of way or margin of Perry Street having a radius of 81.713 feet and an arc of 66 deg. 58 min. 50 sec. to an iron pin; thence running along and with said right of way or margin south 29 deg. 30 min. 38 sec. east 15.69 feet to an iron pin and a corner; thence turning and crossing Perry Street south 60 deg. 29 min. 22 sec. west 225.48 feet to the western right of way or margin of U.S. 158 Bypass and a corner; thence turning and running along with said western right of way or margin of U.S. 158 Bypass north 29 deg. 30 min. 38 sec. west 60.87 feet to a concrete monument and the point of beginning.

Whereas, said tract or parcel of land is shown on that certain plat titled Sea Dunes, Phase 1, dated July 23, 1984, by Stroud Land Surveying, Co., and recorded in Plat Cabinet B, Slide 274, in the office of the Register of Deeds of Dare County, North Carolina, and has platted thereon Lots (hereinafter defined), together with the Common Areas (hereinafter defined) for the use and benefit of the Owners (hereinafter defined) and their guests and tenants; and

Whereas, the undersigned desires to provide for the preservation of the values and amenities in the Development (hereinafter defined) and for the maintenance of said Common Areas (including utilities and amenities) and, to this end, desires to subject the real property described herein to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of the said tract or parcel of land and each Owner; and

Whereas, the undersigned, has deemed it desirable for the efficient preservation of the values and amenities in the Development, that there be an entity to which will be delegated and assigned the powers of maintaining and administering the Common Areas and improvements thereon, administering and enforcing the covenants and restrictions, and levying, collecting and disbursing the assessments and charges hereinafter permitted and described; and

Whereas, there has been incorporated under the laws of the State of North Carolina, as a nonprofit corporation, the Sea Dunes Homeowners Association, Inc., for the purpose of exercising the aforesaid functions; and

Whereas, the Sea Dunes Homeowners Association, Inc. has joined in the execution of this instrument for the purpose of evidencing its consent to the scheme and plan of development herein.

NOW, THEREFORE, R. Guy Mayo, Jr., individually as the fee simple owner of the land herein described, declares that the real property described herein and shown on the certain plat titled "Sea Dunes, Phase 1, Kitty Hawk, Atlantic Township, Dare County, North Carolina," dated July 23, 1984, and recorded in Plat Cabinet B, Slide 274, Dare County registry, described herein above, is to be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, changes and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth which shall run with the land.

The Sea Dunes Homeowners Association, Inc., a non-profit corporation, is the successor-in-interest to R. Guy Mayo, Jr., and as owner of the Common Areas and elements of Sea Dunes, declares or makes known, and imposes the amended covenants set forth herein and imposes the following amended covenants upon all the phases of Sea Dunes and the property as shown and delineated on the following maps recorded in the Dare County Registry: Phase I, recorded at Map Book B, Page 274; Phase II, recorded in Map Book B, Page 356; Phase III, recorded in Plat Cabinet C, Slide 27C, and Slide 32E; Phase III and Phase IV, recorded in Plat Cabinet C, Slide 34C, and Plat Cabinet C, Slide 70A.

## **ARTICLE I**

### **Definitions**

The following words when used in this Declaration or any supplemental Declaration (unless the context shall otherwise require) shall have the following meaning:

- (a) The "Association" shall mean the Sea Dunes Homeowners Association, Inc., its successors and assigns.
- (b) The "Development" shall mean the real property "Sea Dunes, Phase 1, Kitty Hawk, Atlantic Township, Dare County, Cabinet B, Slide 274, Dare County Register, together with all real property (including all subsequent phases), buildings and improvements which the Developer may from time to time and in its discretion, subject to this Declaration of Covenants and Restrictions.
- (c) The "Common Areas" shall mean all those areas of land except lots (herein defined), including the improvements and facilities (including utilities) constructed thereon owned by the Association and described herein and on the certain plat titled "Sea Dunes, Phase 1, Kitty Hawk, Atlantic Township, Dare county, North Carolina," dated July 23, 1984, and recorded in Plat Cabinet B, Slide 274, Dare County Register, together with buildings and improvements thereon. As well as such additional real property (including all subsequent phases), buildings and improvements which the Developer may, from time to time and in its discretion, subject to this Declaration of Covenants and Restrictions, as

well as like areas designated and shown on plats of subsequent phases of the Development filed with the Dare County Register of Deeds and which have been subjected to this Declaration of Covenants and Restrictions and any amendments thereto. Said areas are intended to be devoted to the common use and enjoyment of the Members, (guests and tenants) of the Association (hereinafter defined), and are not dedicated for use by the general public.

- (d) "Lot" shall mean any lot and dwelling unit or improvements located on said lot in the Development that shall not include the Common Areas.
- (e) The "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (f) North Carolina Planned Community Act (NCPCA) refers to the North Carolina General Statutes Chapter 47F titled the "North Carolina Planned Community Act".
- (g) "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article II, Section 1 hereof, including those owners of lots in subsequent phases, if any, in the Development.
- (h) The "Developer" shall mean Sea Dunes, its successors and assigns and R. Guy Mayo, Jr., individually.

## **ARTICLE II**

### **Membership and Voting Rights in the Association**

Section 1. Membership. Every person who is an Owner of any Lot which is subject to this Declaration's assessment (or the assessment of any supplement thereto) by the Association shall be a member of the Association.

Section 2. Voting Rights. The Association shall have one class of voting membership. Members shall be all owners of the lots and units in the Sea Dunes community as reflected on the various recorded plats thereof. Each member shall be entitled to one vote in the Association for each lot in which he holds the interest required for membership by Section 1 of this Article II.

If a lot is jointly owned by multiple owners, then the multiple owners must select one owner to act as the member entitled to cast the vote for the jointly owned unit. The designation of the owner selected shall be provided to the Association prior to the vote on any matter coming before the Association.

## **ARTICLE III**

### **Property Rights and Common Areas**

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article III, every Member of the Association shall have a right and easement of enjoyment in and to the Common Areas and improvements and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Areas. The Developer hereby covenants for itself, its successors and assigns, that it will convey by non-warranty deed to the Association its interest and title to the Common Areas and improvements thereon, free and clear of all covenants, restrictions, easements, encumbrances and liens except covenants, restrictions, easements, encumbrances and liens created by or pursuant to the Declaration, (including 1984 ad valorem taxes and the lien of the Deeds of Trust recorded in Book 365, page 478 and Deed Book 373, page 849 in the Dare County Registry to John S. Moore II, trustee for United Carolina Bank.)

Section 3. Owners Building and Utility Easements. There is hereby conveyed to the lot and dwelling unit owner, their heirs, successors and assigns, subject to the conditions set forth herein, a perpetual right and easement to construct, or erect, build, repair and maintain dwelling units or portions thereof across and outside of the lot lines as shown on the Sea Dunes recorded plats and upon the Common Areas of the Association, as well as an easement for any utilities and cable T.V. necessary for the use and enjoyment of said dwelling units built or to be built on the aforesaid lots. The rights and easements shall be appurtenant to the lot for which it is necessary and shall extend a distance of three (3) feet in all directions from the original building foundation which supports the exterior load bearing walls (excluding foundations of porches, decks, stoops, stairways, and overhanging or cantilevered decks or porches), but in no event shall said easements cross over the lot line of any other lot on said plat and some portion of the foundation of the dwelling unit shall lie within the boundary and upon some portion of the lots as shown and delineated on the applicable recorded plat of Sea Dunes (it being the intention of the parties hereto that a portion of the building as constructed shall be within the boundaries and upon one of the lots as shown on the aforementioned plat. The easement and rights shall be appurtenant to and run with each of the aforesaid lots.

#### Section 4. Easement – Septic and Drain Fields

- (a) The Developer reserves unto itself, its successors and assigns and grants and conveys to each lot owner, and said owners, heirs, successors and assigns a septic system and drain field easement for the maintenance, repair, and replacement of the septic system and drain field for each dwelling now or subsequently constructed in Sea Dunes. The septic system easement (including drain field) shall be on, under and beneath the surface area of the land. At the completion of any land disturbing activity necessary to replace or repair a portion or the entire septic

system and/or drain field, the disturbed surface of the land shall be restored to essentially the same condition as prior to the land disturbing activity.

- (b) The lot owners shall have the duty and obligation to maintain, repair and replace (if necessary) the septic system and drain field which is used by their lot and dwelling. In the event a septic system and drain field are jointly used, the cost of repairing, maintaining and replacing said septic system and drain field shall be shared proportionately and equally among the joint owners.
- (c) The Board of Directors (sometimes referred to hereinafter as the “Board of Directors” and/or the “Board”) of the Association shall have the right, but not the obligation, to replace, maintain, or repair the septic system and/or drain field as is set forth in Article V, Section 12. The lot owners which use the septic systems and drain fields shall be responsible for the cost of replacement, maintenance, and repairs approved by the Board of Directors.

Section 5. Extent of Members’ Easements. The rights and easements granted Members hereby shall be subject to the following:

- (a) The rights of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Areas and in aid thereof, to mortgage or otherwise secure such borrowings by creating a lien or other security interest in said Common Areas and right of any mortgagee of said property or others holding a security interest created for the purpose aforesaid shall be superior to the rights of the Owners hereunder;
- (b) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Areas against foreclosure;
- (c) The right of the Association to suspend the enjoyment rights of any Member to the Common Areas for any period during which any assessment remains unpaid or for any infraction of any rules and regulations;
- (d) The right of the Association to charge reasonable admission and other fees for the use of the Common Areas or any portion thereof;
- (e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication, transfer or determination as to the purposes or as to the conditions thereof shall be effective unless an instrument, signed by Members entitled to cast two-thirds (2/3) of the votes has been recorded agreeing to such dedication, transfer, purpose or condition, and unless written notice of the action is

sent to every Member not less than ten (10) nor more than fifty (50) days in advance of any action taken and;

- (f) The Association shall have the right to grant and reserve easements and rights of way through, under, over, and across the Common Areas for the installation, maintenance, and inspection of drainage, fuel oil, utilities (including but not limited to, water, sewer, electrical, gas lines, and telephone), cable vision, and other public or private utilities, and other services.
- (g) The right of the Association to dedicate the roads and streets in the Development to public use.
- (h) The right of the Association to unilaterally grant and reserve the right and easement of enjoyment in and to the Common Areas to every Owner of a Lot located in the Development, which right and easement shall be appurtenant to and shall pass with the title to every Lot.

#### **ARTICLE IV**

#### **Maintenance and Operation of Common Areas and Covenant for Assessment Therefor**

Section 1. Operation and Maintenance of Common Areas. The Association shall operate and maintain the Common Areas at its sole expense.

Section 2. Assessments.

- (a) Each owner of any lot by acceptance of a deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments (maintenance charges), and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as herein provided.
- (b) The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Development in connection with their use and enjoyment of the Common Areas and improvements, including, but not limited to the payment of taxes, insurance premiums and debt service on mortgages, if any, any repair, replacement and addition to the Common Areas, the cost of labor, equipment, materials, management and supervision of the Common Areas, or for creating reserves for such purposes, all of which obligations the Association hereby assumes as of the date of the conveyance of title to the Common Areas by the Developer.

Section 3. Amount and Payment of Annual Assessment. The Association shall from time to time fix the amount of the annual assessment at a sum sufficient to pay the anticipated costs of maintaining and operating the Common Areas and improvements as contemplated by Section 2 (b) of this Article IV and any

operating deficits previously sustained. The proportionate share of the aggregate assessments of the Association chargeable to each Lot shall be the said aggregate annual assessment divided by the number of Lots owned by Members. An Owner's annual obligation shall be payable as directed by the Association.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 of this Article IV, the Association may levy special assessments (which shall be fixed in accordance with the proportions set forth in Section 3 of this Article IV) for all Lots for the purposes of defraying, in whole or in part, the cost of any construction, reconstruction or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, as well as necessary waste water treatment facilities, provided that any such special assessments shall have the assent of two-thirds (2/3) of the vote of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. The due date of any specified assessments shall be fixed in the resolution authorizing such assessments.

Section 5. Limited Repair Assessment. If the Board of Directors determines to replace, maintain, repair, alter, or improve the buildings on a lot or portions thereof, the Board of Directors shall have the right to pay for such as follows: (i) from annual assessments, (ii) to request a special assessment as set forth in Section 4 of this Article IV, or (iii) shall have the right, but not the obligation, to assess each specific lot where the replacement, maintenance, repair, alteration, or improvement has been done for their prorated share for the actual cost incurred for such. Any invoicing to a lot owner for their prorated share shall be deemed to be an assessment which shall be due upon receipt by the lot owner and if not paid shall be subject to the rights, duties, and obligations as contained with this Article IV.

Section 6. Duties of the Board of Directors. With regard to the amount and payment of annual assessments as set forth above, the Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for such assessment period at least thirty (30) days in advance of such date of period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto, which shall be maintained by the Association and shall be open to inspection by any Owner.

Written notice of the assessments shall thereupon be sent to every Owner subject thereto.



The Association shall, upon demand at any time, furnish to any Owner, liable for said assessment, a certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been made.

Section 7. Nonpayment of Assessment; the Personal Obligation of the Owner; the Lien and Remedies of the Association. Every assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided, from the time made and until it is paid, shall constitute and continue as a lien on each Lot, and shall also be a personal obligation of the Owner of the Lot on the date when such assessment is due and payable, but the personal obligation for assessments made but unpaid shall not thereafter pass to the successor in title of the Owner unless responsibility therefore shall be assumed by them in writing. If any such assessment is not paid within thirty (30) days after the date upon which it is due and payable, such assessment shall bear interest from the date on which it is due and payable at the maximum legal rate of interest allowed by law on judgments.

The Association may bring a legal action against any Owner personally obligated to pay any assessment and/or may enforce or foreclose the lien against the Lot in respect of which any assessment, or interest thereon, has not been paid. In that event a judgment shall include interest on the assessment as above-provided and a sum, to be fixed by the Court, to reimburse the Association for all costs, disbursements and expenses (including without limitation, reasonable attorney's fees) incurred by the Association in connection with said action.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage, deed of trust or other security interest now or hereafter placed upon any Lot. Any and all assessments which may become due and payable prior to a sale or conveyance in lieu of foreclosure shall be paid by the purchaser, except where the purchaser is the holder of the obligation secured by any such mortgage, deed of trust or security interest.

Section 9. Obligation of Owner of Dwelling Unit to Maintain Insurance Coverage and Owner's Duty to Rebuild, Repair, or Restore Damaged Units. Each owner of a Dwelling Unit shall obtain and maintain in force such insurance coverage on his Dwelling Unit as the Board of Directors of the Association may determine. Each owner of a Dwelling Unit shall furnish to the Board of Directors of the Association such evidence of insurance coverage as the said Board of Directors may from time to time require. In the event an owner fails to maintain such coverage or furnish evidence thereof, the Association may obtain policies providing such coverage and pay the premiums therefor, which premiums shall be

chargeable against the owner of a Dwelling Unit failing to maintain such coverage or failing to furnish evidence thereof as aforesaid, which premiums shall constitute and continue as a lien on the Dwelling Unit of any such owner and shall also be a personal obligation of any such owner and be enforced as provided in Article IV, Section 7 hereof.

In the event any unit is or units are partially or wholly destroyed, the owner covenants and agrees to rebuild, repair or restore the units to essentially the same condition and appearance (including using the same or similar materials) as existed prior to the partial or total destruction thereof. The Association shall retain and safely keep a set of plans and specifications for each building within the Development for the use by an owner who is rebuilding, repairing or restoring a partially or wholly destroyed unit. In the event a set of plans and specifications for a specific building is unavailable, then the association will employ either a general contractor or an architect, as the case may be, to prepare plans from which the unit can be restored as closely as reasonably possible to the original plans and to develop specifications that are identical to or substantially similar in quality, performance, and appearance to the original specifications of the unit.

The obligations contained in this Article IV, Section 9 shall apply irrespective of the provisions contained in Article V, Section 12.

## **ARTICLE V Use of Property**

Section 1. Fence. No jetty or fence of any type shall be erected or placed upon said Lot or Common Areas except with the prior written approval of the Association.

Section 2. Obstructions. There shall be no obstruction of the Common Areas nor shall anything be stored in the Common Areas without prior consent of the Board of Directors of the Association.

Section 3. Planting. No Owner shall plant or install any trees, bushes, shrubs, or other plantings, or authorize the same to be done, in any Common Areas, without the written approval of the Board of Directors of the Association.

Section 4. Easements.

- (a) Perpetual easements in the Development for the installation and maintenance of sewer, water, gas, electrical, telephone, cablevision, drainage facilities, and other utilities or services, for the benefit of the adjoining land owners, the County of Dare or any other municipality having jurisdiction over the development, any municipal, public or

private utility company ultimately operating such facilities are reserved to the Association for the purpose of dedication to such persons or entities.

- (b) Easements in general in and over each Dwelling Unit and/or Lot for the installation and maintenance of electric, gas, and telephone facilities are reserved to the Association. No building or structure shall be erected within the easement areas occupied by such facilities.

Section 5. Residential Use. All Dwelling Units or Lots shall be used for residential purposes only, but this shall not prohibit the owner from renting the unit for residential purposes. No building shall be erected or placed or permitted to remain on any lot other than one single-family dwelling.

Section 6. Signs. No sign of any kind, excepts those permitted by the North Carolina Planned Community Act, shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale or rent.

Section 7. Animals. No animals, livestock or poultry of any kind other than household pets, shall be kept on any Dwelling Unit of Lot. No household pets shall be housed outside a Dwelling Unit or permitted to run free. Food shall not be placed outdoors where the food is accessible to animals. Food and food waste products shall be place only in containers approved by the Association.

Section 8. Trailers. No trailer or temporary structures, such as tents, shacks, garages, barns or other outbuildings, campers, modulars or prefabricated structures, shall be moved onto, maintained, placed, used or permitted to remain on a Dwelling Unit or Lot.

Section 9. Common Areas. The Common Areas may be used by an owner and his guests or tenants only as provided by this Declaration, the Bylaws of the Association and/or rules duly promulgated by the Association. No commercial use may be made of any recreational facilities located on the Common Areas and no loud speakers shall be permitted or used. Any outdoor lighting used in connection with recreational facilities shall be extinguished between 10 o'clock p.m. and 7 o'clock a. m. each day.

Section 10. Architectural Review. The Board of Directors of the Association shall establish a standing committee for architectural review consisting of three Members, none of whom shall be joint owners of the same lot with another committee member. In order for the Members' terms to be staggered, the initial terms of appointment shall be for one, two, and three years respectively, and thereafter the appointed term shall be for two years each.

Before any exterior repairs, alterations, or restoration work (including exterior painting) is commenced, the owner shall obtain the approval of the Architectural Review Committee ("ARC") with respect to the nature and extent of the proposed work and with respect to the general conformity of the proposed work with the existing aesthetic and architectural standards in Sea Dunes Town Homes and with the list of unit exterior colors and shingle colors approved by the Board of Directors on file with the ARC.

The owner must adhere to the following procedures and requirements.

- (a) A detailed description of the work proposed must be submitted to the ARC in triplicate. The submittal shall include the brand name and color of the materials proposed to be used. Any color submitted that is not contained on the pre-approved exterior color list for paint and/or shingles must be approved by the Board of Directors, which approval is in the sole discretion of the Board of Directors.
- (b) No work shall be commenced until the ARC has given its written approval of the proposed work. In the event of a violation of this section, the Board of Directors may suspend the Members' (and guests' and tenants') rights to use the Common Areas of Seas Dunes, it may impose a fine as provided by the North Carolina Planned Community Act, or it may utilize such legal and equitable remedies as by law provided.
- (c) Notwithstanding the foregoing provisions, emergency repairs necessary to protect the unit and its contents may be made to the unit and then the ARC submission for approval must be submitted within twenty (20) days of the date of the emergency. The emergency work shall be made to conform to the existing ARC standards.
- (d) Exterior repairs consisting of replacing an existing exterior feature with an identical feature (or substantially similar feature if any identical feature is unavailable) and color and which feature has a retail cost of not more than Four Hundred Dollars (\$400.00) is exempt from the pre-approval requirements of this section.
- (e) An owner may appeal the decision of the ARC to the Board of Directors by filing a written appeal notice with the President of the Association or the Chairman of the ARC within seven (7) days of receiving the ARC decision. The Board of Directors shall review the ARC materials submitted to the ARC for its prior review and then render a final decision.
- (f) In the event the ARC or the Board of Directors on appeal fails to render a written decision within forty-five (45) days of the date of the receipt of the request for approval or the notice of appeal, then the request shall be deemed approved as provided herein and the owner can then

commence the repairs, alterations, or restoration requested and deemed approved.

Section 11. Repairs, Alterations and Restorations. Except as otherwise set forth in Section 10 of this Article V, repairs, alterations and restorations of every nature to a Dwelling Unit or Lot, including, but not limited to, screening porches, installing screen doors, screens, stairs or windows or exterior painting, shall be approved by the Board of Directors of the Association as set forth herein.

Damage to or destruction of any one or all of the Dwelling Units and/or improvements shall be promptly repaired and restored by the Owner using the proceeds of insurance for that purpose as provided in Article IV, Section 9 of the Declaration. All repairs or reconstruction shall be made substantially in accordance with the plans and specifications used for the original structures.

Section 12. Repairs by Association.

- (a) Notwithstanding Section 11 of this Article V, the Board of Directors of the Association shall have the right, but not the obligation to contract for and have replaced, maintained, repaired, altered, or improved the following portions of any building or portion(s) of such buildings as the Board of Directors shall deem appropriate: roofs, siding, exterior painting, septic systems, and decks. As specified herein, the Board of Directors, their employees, agents, contractors and subcontractors shall have the right to go upon any such lot or any portion of such lot to replace, maintain, repair, alter or improve the building or any portion of the building. Any such replacement, maintenance, repair, alteration or improvement to a building on a lot or any portion thereof by the Board of Directors of the Association may be billed by the Board of Directors of the Association and paid for (i) through the funds of the annual assessments and/or (ii) through special assessments, or may be billed on a prorated basis to those specific lot owners whose lots are actually affected by the replacement, maintenance, repair, alteration and improvement. The choice of how to pay for any such replacement, maintenance, repair, alteration and improvement shall be made by the Board of Directors, subject to the provisions of Article IV.
- (b) If an owner or owners fail or refuse to maintain, repair, or restore their unit as provided herein, or the Association, by vote of a two-thirds (2/3) majority of its Members, authorize the Board of Directors to undertake maintenance, repairs, or restoration work that is common to one or more buildings, then the Board of Directors can effect the maintenance, repair, and restoration to the unit or buildings. Any such maintenance, repair, or restoration to a unit or building by the Board of Directors of

the Association may be billed by the Board of Directors of the Association and paid for (i) through the funds of the annual assessments and/or (ii) through special assessments, or may be billed on a pro-rated basis to those specific lot owners whose lots are actually affected by the maintenance, repair, or restoration. The choice of how to pay for any such maintenance, repair or restoration shall be made by the Board of Directors, subject to the provisions of Article IV.

- (c) The Board of Directors must give written notice to the homeowner that they intend to perform such maintenance, repairs or restoration work, and request the homeowner to perform such work. If the homeowner does not perform the maintenance, repairs or restoration within a reasonable time, the Board of Directors may undertake to have the work performed after approval of the special assessment upon the vote of the members of the Association if applicable.

Section 13. Porch Railing. No articles, including, but not limited to, towels or blankets shall be permitted on porch railings or otherwise attached to a Dwelling Unit. A single, reasonable size flag on a pole securely attached to the deck is permitted.

Section 14. Waste and Rubbish. No lot shall be used or maintained as a dumping ground for rubbish. All trash, garbage or other waste shall be kept in sanitary containers and all incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

Section 15. Offensive Activity. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

## **ARTICLE VI**

### **Party Walls**

Section 1. General Rules of Law to Apply. The term “party wall”, as used herein shall mean and refer to the entire wall, from front to rear, all or a portion of which is used for support or fire wall protection between each adjoining Dwelling Unit situated, or intended to be situated, in the boundary line between adjoining Dwelling Units.

To the extent not inconsistent with the provisions of this Article VI, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions, shall apply to each party wall which is built as part of the original construction of the town houses located in the Development and any replacement thereof.

In the event that any portion of any structure, originally constructed by the Developer, including a party wall, shall protrude into an adjoining Lot or Dwelling Unit, such structure or party wall shall not be deemed to be an encroachment upon the adjoining Lot or Dwelling Unit. Owners shall neither maintain any action for the removal of the party wall or projection nor any action for damages. In the event there is a protrusion as described in the immediately preceding sentence, it shall be deemed that said Owners have granted perpetual easement to the adjoining owner or owners for continuing maintenance and use of the projection or party wall. The foregoing shall also apply to any replacements of any structures of party walls if they are constructed in conformance with the original structure, or party wall constructed by the Developer. These rights and easements shall be appurtenant to the Dwelling Units and/or Lots and shall pass to each owner's successor in title.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of the party wall shall be shared equally by the Owners who make use of the wall.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

Section 4. Damage and Repair. Notwithstanding any other provisions of this Article, an owner who by his negligent or willful act causes the party wall to be damaged, shall bear the whole cost of repairing such damage.

Section 5. Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the Dwelling Units and/or Lots and shall pass to such owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration in accordance with Chapter 1, Article 45 of the General Statutes of North Carolina known as the Uniform Arbitration Act.

## **ARTICLE VII**

### **General Provisions**

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of

and be enforceable by the Association, or any Owner, their respective heirs, successors and assigns, until December 31, 2044, unless otherwise expressly limited herein, after which time the said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the Owners of eighty percent (80%) of the Lots has been recorded agreeing to terminate the said covenants and restrictions. Provided, however, that no such agreement to terminate shall be effective unless made and recorded at least three (3) months in advance of the effective date of such change and unless written notice of the proposed termination is sent to every owner at least ninety (90) days in advance of any action taken.

This Declaration may be amended at any time by an instrument signed by Members holding not less than two-thirds (2/3) of the votes as pursuant to the North Carolina Planned Community Act. Any such amendment must be recorded in the office of the Register of Deeds of Dare County to be effective. Provided however, that no such agreement to change shall be effective unless made and recorded at least six (6) months in advance of the effective date of such change and unless written notice of the proposed amendment is sent to every owner at least ninety (90) days in advance of any action taken.

Section 2. Notices. Any notice required to be given by first class US Mail can be sent or effected by electronic or digital means for each owner for which the Association has a current email address for said owner, and such notice shall be deemed delivered upon the sending thereof together with a printed report that the notice was transmitted to the member with the date of such transmission.

Section 3. Enforcement The Association, any Member or any Owner shall have the right to enforce these covenants and restrictions against any person or persons violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or recover damages; and against the land to enforce any lien created by these covenants; and failure by the Association or Member or any owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement shall be chargeable to the owner violating these covenants and restrictions and the expense so incurred by the Association shall constitute a lien on such Owner's Dwelling Unit and Lot, collectible in the same manner as assessment hereunder.

Section 4. Dissolution of Association. In the event the Association is dissolved in accordance with the provisions of the Association's Articles of Incorporation and the assets, both real and personal, of the Association are dedicated to a governmental authority having ad valorem taxing powers, the covenants and restrictions contained herein, other than those applying to assessments, shall remain in full force and effect. It shall be an obligation of the



Association, prior to said dissolution, to establish an appropriate authority, corporation or other entity for enforcing the liens and restrictions contained herein.

In the event that such dedication to a governmental authority is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, Association, trust or other organization to be devoted to purposes nearly as practicable the same as those to which they were required to be devoted by the Association. In such event the covenants and restrictions contained in the Declaration, including those applying to assessments shall remain in full force and effect. No such disposition of the properties of the Association shall be effective to divest or diminish any right or title of any Member vested in him under the Declaration and deed applicable to his property unless made in accordance with the provisions of the Declaration and deed.

Section 5. Conflicts. In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall control.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

Section 7. North Carolina Planned Community Act. At a meeting of the Association on the 15<sup>th</sup> day of April, 2002, the required number of Members voted to impose the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes) upon all the units and lots in Sea Dunes Townhomes, and on the 4<sup>th</sup> of March, 2003, the Amendment to the Declaration imposing Chapter 47F and subjecting the units and lots to Chapter 47F was approved by the requisite lot owners. Chapter 47F is hereby re-imposed upon Sea Dunes Townhomes by this amendment pursuant to the aforesaid votes and actions of the Members and the Association.

Section 8. Original Covenants and Restrictions. Except as herein amended, the original covenants and restrictions, as heretofore amended, shall remain in full force and effect. Any conflict between the terms and provisions set forth in this Amendment to Covenants and Restrictions (the "Amendment") and the original covenants and restrictions, and prior amendments thereto shall be governed, interpreted and controlled by the Amendment.

IN WITNESS WHEREOF, the Association has executed this Amendment to the Declaration of Covenants and Restrictions this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Sea Dunes Homeowners Association, Inc.

By: \_\_\_\_\_ {SEAL}  
President

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is the President of Sea Dunes Homeowners Association, Inc., a North Carolina non-profit corporation, and that he/she, as President being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

{SEAL/STAMP}