

BK 384 PG 0972

PREPARED BY AND RETURN TO:
JOHN G. GAW, JR.
P. O. BOX 1895
KILL DEVIL HILLS, NC 27048

NORTH CAROLINA

DARE

SEA DUNES

DECLARATION OF COVENANTS AND RESTRICTIONS

Whereas, R. Guy Mayo, Jr., is the fee simple owner of 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. Highway 158 Business south 30 deg. 26 min. 40 sec. east 123.00 feet to an iron pin and a 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 225.40 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.

FILED
3 PM 12 69
GUY MAYO, JR.
REGISTER OF DEEDS
DARE COUNTY, N.C.

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

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 Area 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;

Wherease, Sea Dunes 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 that 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, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth which shall run with the land.

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 described herein and shown on that 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 all buildings and improvements thereon, as well as such additional real property (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) being constructed thereon, owned by the Association and described herein and on that 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 (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 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.

(c) "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to the 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) The "Developer" shall mean Sea Dunes, its successors and assigns and R. Guy Mayo, Jr., individually.

(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.

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 two classes of voting membership.

Class A. Class A Members shall be all Owners except the Developer. Each Class A 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.

Class B. The Class B Member shall be the Developer, its successors and assigns. The Class B Member shall be entitled to five votes in the Association for each unsold Lot in each phase submitted to this declaration, provided that upon the happening of either of the following events, whichever first occurs, the Class B Membership in the Association shall cease and be converted to Class A Membership: (a) when the total votes outstanding in the Class A Membership in the Association equals 60 or (b) on December 31, 1987.

When a purchaser of a Lot takes title thereto from the Developer, the purchaser becomes a Class A Member of the Association and the membership of the Developer with respect to

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that Lot shall cease.

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 prior to December 31, 1987, 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 this 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 and the Owner does hereby declare, publish, give, grant and convey to the lot and dwelling unit owners, 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, walkways, and overhanging or cantilevered decks or porches), but in no event shall said easements cross over the lot line of any other lot or said plat

and some portion of the foundation of the dwelling unit shall lie within the boundary and upon some portion of the lot 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. Easements - Septic and Drainfield.

(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 drainfield easement for the maintenance, repair, and replacement of the septic tank system and drainfield for each dwelling now or subsequently constructed in the Sea Dunes, Phase 1 Development. The septic system easement (including drainfield) shall be on, upon 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 drainfield, the disturbed surface of the land shall be restored to essentially the same condition as prior to the land disturbing activity.

The lot owners shall have the duty and obligation to maintain, repair and replace (if necessary) the septic system and drainfield which is used by their lot and dwelling. In the event a septic system and drainfield are jointly used, the cost of repairing, maintaining and replacing said septic system and drainfield shall be shared proportionately and equally among the joint owners.

In the event a septic system and/or drainfield fails and the owner or owners do not repair or replace the system as provided herein, then the Homeowner's Association, after giving the owner(s) seven (7) days written notice, may employ a firm or individual necessary to correct the failure, including replacing the system and/or drainfield, and such firm or employee shall have the same right to effect the work, repair, or replace the system as that of the lot owner. The cost shall be assessed by the Homeowner's Association against the lot(s) and dwellings and

*septic system
cost
7 days notice*

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owner(s) as a separate charge. The lot owner(s) shall pay the separate charge within 30 days after receiving notice of the amount due and lot owners' failure to pay such sum when due shall subject the owners' lot(s) to a lien for the unpaid amount. The lien shall be enforced as provided in this Declaration of Covenants for the enforcement of liens.

late after 30 days

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;

HOA can suspend right to use

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Areas or any portions 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 of the votes of the Class B Membership, if any, 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 10 nor more than 50 days in advance of any action

Can transfer title w/ 2/3 in opinion

taken; and

(f) The right of the Developer, unilaterally and/or in conjunction with the Association, to grant and reserve easements and rights of way through, under, over, and across the Common Areas, for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, fuel oil, cablevision and other utilities and services, and the right of Developer to grant and reserve easements and rights of way through, over, upon and across the Common Areas for the completion of Developer's work in connection with the construction of improvements in the Common Areas and for the completion of Developer's work and for the operation and maintenance of the Common Areas.

(g) The right of the Developer, unilaterally, to dedicate the roads and streets in the Development to public use.

(h) The right of the Developer 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

Completion, Maintenance and Operation of Common Areas and Covenant for Assessments Therefor

Section 1. Completion of Common Areas by the Developer.

(a). Prior to the conveyance of the last Lot of the last phase submitted to this Declaration in the Development, the Developer shall construct the amenities and all other improvements (including utilities referred to herein) shown on the aforesaid plat, which improvements shall be located on the Common Areas.

(b). Developer's obligation to complete the construction of said improvements, at the Developer's sole cost and expense, shall survive the conveyance of the Common Areas to the Association.

Section 2. Operation and Maintenance of Common Areas. Commencing on the date of the conveyance of the fifth lot, the Association shall operate and maintain the Common Areas at

its sole expense.

Section 3. Assessments.

(a) Commencing on the date of conveyance of the first Lot in the Development and thereafter, the Developer, for each Lot in the Development phase owned by the Developer, hereby covenants and agrees 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) Each subsequent 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.

(c) 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. The Developer shall have no obligation to operate and maintain the Common Areas after the conveyance of the Common Areas to the Association.

Section 4. 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 3 (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 Class A and Class B Members. An Owner's annual obligation shall be payable as directed by the Association. The annual assessment due the Association from each Owner of a Lot for the year 1984 (and thereafter until changed by the Association) shall be Nine Hundred Sixty Dollars and NO/100 (\$960.00).

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 4 of this Article IV, the Association may levy special assessments (which shall be fixed in accordance with the proportions set forth in Section 4 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 of the vote of each class 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 10 days nor more than 50 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 6. Duties of the Board of Directors. In the event of any change in the 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 30 days in advance of such date or 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

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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 successors in title of the Owner unless responsibility therefor shall be assumed by them in writing. If any such assessment is not paid within 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 judgements.

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 transfer of the Lot pursuant to a decree of a foreclosure, or by 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 or require in sufficient amounts to replace his Dwelling Unit. 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.

Insurance required

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 Homeowner's 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.

ARTICLE V

Use of Property

Section 1. Fence. No jetty or fence of any type shall be erected or placed upon said lot except with the prior written approval of Developers.

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.

*Use of
Common Areas*

Section 3. Planting. No Owner, other than the Developer, 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 Developer, its successors and assigns, 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 Developer, its successors and assigns. 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 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 or signs used by the Developer to advertise the property during the construction and sale period.

Section 7. Animals. No animals, livestock or poultry of any kind, other than household pets, shall be kept on any Dwelling Unit or Lot. No household pets shall be housed outside a Dwelling Unit or permitted to run free.

Section 8. Trailers. No trailer or temporary structures, such as tents, shacks, garages, barns or other modulars or prefabricated structures,

*Residential
Use*

Signs

Pets

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.

*Lights
Out 10:00*

Section 10. Architectural Review. The design, materials, construction and location on each lot of any home, residence, commercial structure or other permitted building or buildings or the alteration or addition thereto, before the beginning of any work thereon, shall be submitted to the Developer and the Sea Dunes Homeowner's Association, Inc., Board of Directors for approval and its approval shall be a condition precedent to the beginning of work on said structure; except however, original construction by the Developer shall not require the approval of the Board of Directors of the Sea Dunes Homeowner's Association, Inc. No owner shall change the exterior color of his unit without the prior written consent and approval of the color selected by the Developer, its successors or assigns, and the Board of Directors of the Association.

*Architectural
Review*

Section 11. Alterations and Repairs. Alterations 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.

*Ad. approval
alterations*

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 this Declaration. All repairs or reconstruction shall be made substantially in accordance with the plans and specifications used for the original structures.

Section 12. Porch Railing. No articles, including, but not limited to, towels, blankets or flags, shall be permitted on porch railings or otherwise attached to a Dwelling Unit.

Section 13. 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 14. 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.

Section 15. Developer's Agents. Whenever in these restrictions any approval, authority, act or deed is required of the Developer, the same may be taken as done if such approval, authority, act or deed is given or done by an agent authorized to act on behalf of the Developer. Until the Developer files a writing in the Dare County Register of Deeds office to the contrary, Terry J. Dixon or Leroy Cherry shall be agents of the Developer for the purpose of granting approvals, authority, acts and deeds required of the Developer pursuant to these restrictions.

ARTICLE VI

Section 1. Additional Development. The Developer, its successors or assigns, reserves the right to develop neighboring tracts or parcels of land and impose upon the land so developed these covenants and restrictions. The owners of lots and/or units which are a part of subsequent phases of Sea Dunes and upon which this Declaration of Covenants and Restrictions (including any amendments) has been imposed shall become members of the Sea Dunes Homeowner's Association, Inc., with the same rights, benefits, duties and obligations as set forth herein, and contained in the Articles of Incorporation of the Association and the By-laws of Sea Dunes Home Owner's Association, Inc., with respect to all Common Areas, including all improvements, facilities and amenities thereon, shown on the plat of each phase of Sea Dunes duly recorded in the office of the Register of

Deeds of Dare County and provided further that said phase has been subjected to this Declaration of Covenants and Restrictions, as the same may be amended from time to time.

The subsequent phases of Sea Dunes shall become a part of and be included in the Sea Dunes Development at such time as the plat of said subsequent phase and an instrument containing a description thereof and which imposes these restrictions and covenants thereon have been filed with the Dare County Register of Deeds. Thereafter, the owners of lots in subsequent phases shall pay the annual assessments declared by the Association for the calendar year in which the owner acquires title, prorated as of the settlement date.

ARTICLE VII

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 easements 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, or 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. Restoration 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 VIII

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, 2014, unless otherwise expressly

limited herein, after which time the said covenants and restrictions shall be automatically extended for successive periods of ten years each unless an instrument signed by the Owners of seventy-five percent of the Lots has been recorded, agreeing to change or terminate the said covenants and restrictions. 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 agreement 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 of the votes of all classes of the membership. Any such amendment must be recorded in the office of the Register of Deeds of Dare County to be effective. *2/3 to amend*

Section 2. Notices. Any notice required or permitted to be sent to any Member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed first class mail, postage prepaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

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 ^oviolating 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 assessments 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 judgement or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Developer has executed this Declaration of Covenants and Restrictions and adopted as its seal the word "SEAL" appearing at the end of their respective signature lines the day and year first above written and R. Guy Mayo, Jr., has adopted as his seal the word "SEAL" appearing at the end of his signature line.