

**DECLARATION OF PROTECTIVE COVENANTS  
FOR MONTERAY SHORES PUD  
PHASE I**

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DECLARATION OF PROTECTIVE COVENANTS  
FOR MONTERAY SHORES PUD  
PHASE I

THIS DECLARATION OF PROTECTIVE COVENANTS, made this \_\_\_\_\_ day of \_\_\_\_\_, 1988 by Monterey Shores, Inc., a North Carolina Corporation, hereinafter called "Declarant";

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of certain real property located in Poplar Branch Township, Currituck County, North Carolina and more particularly described in Article I herein and said property being hereinafter referred to as "Monteray Shores PUD"; and

WHEREAS, Declarant desires to develop Monterey Shores PUD into a residential community with recreational amenities and common areas for the benefit of property owners in Monterey Shores PUD and to provide a flexible and reasonable method for the administration and maintenance of the properties within Monterey Shores PUD, a portion of the third Phase of Monterey Shores PUD will be reserved for commercial purposes; and

WHEREAS, Declarant will develop Monterey Shores PUD into Phases as more particularly set forth in Article III herein and will subject those portions of that property described in Article I together with any future Phases to this Declaration of Protective Covenants; and

WHEREAS, Declarant wishes to insure that any improvements to the property be in conformance with a standard of architectural guidelines for the purpose of protecting the value and desirability of Monterey Shores PUD and has made provisions for an Architectural Standards Committee which would administer those architectural guidelines for Monterey Shores PUD as more particularly set forth in Article IX; and

WHEREAS, Declarant has caused to be incorporated Monterey Shores PUD Homeowners Association, Inc., a North Carolina Non-Profit Corporation for the purpose of administering and enforcing the Covenants hereinafter created;

NOW, THEREFORE, the Declarant hereby declares all that property described in Section 1.01 herein and any subsequent amendments which may add those portions of that property described in Sections 1.02 and 1.03 to be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to this Declaration of Protective Covenants, easements, liens and charges, all of which are declared and agreed to be in furtherance of enhancing and protecting the value, desirability, and attractiveness of Monterey Shores PUD and any part thereof, and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the described Monterey Shores PUD or any part thereof.

ARTICLE I.

STATEMENT OF SUBMISSION

Section 1.01 Submission of Property. The Declarant is the owner in fee simple of certain real property situated in Poplar Branch Township, Currituck County, North Carolina, said property referred to as "Monteray Shores PUD Phase I", said property being more particularly described in Exhibit A, which Exhibit A is attached hereto and incorporated herein by reference. It is the intention of the Declarant to submit by this Declaration that property described in Exhibit A, (hereinafter referred to as

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"Property") together with any improvements, easements, rights and appurtenances thereunto belonging.

Section 1.02 Notice of Intention for Future Submission of Phase II. The Declarant is the owner of that property described in Exhibit B and it is the intention of the Declarant to submit said property at a later date as Phase II to this Declaration by an Amended Declaration. The total combined property shall continue to be known as Monterey Shores PUD. At such time as Phase II is submitted to this Declaration, all Lot Owners and all Phases subject to this Declaration shall have the rights and privileges in all the common elements located within all Phases subject to this Declaration.

Section 1.03 Notice of Intention for Future Submission of Phase III or Additional Phases. The Declarant is the owner of that property described in Exhibit C and it is the intention of the Declarant to submit said property at a later date as Phase III or to submit portions of "Exhibit C" as Additional Phases to this Declaration by an Amended Declaration. The total combined property shall continue to be known as Monterey Shores PUD. At such time as Phase III or Additional Phases are submitted to this Declaration, all Lot Owners and all Phases subject to this Declaration shall have the rights and privileges in all the common elements located within all Phases subject to this Declaration. Declarant expressly reserves the right to exempt from this Declaration those portions of property which may be designated as "Commercial Site" within Phase III or any Additional Phases.

## ARTICLE II.

### DEFINITIONS

Section 2.01 Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Additional Phases" shall mean and refer to that property designated in "Exhibit C" which may be added to this Declaration as Phase III or Additional Phases in the event that not all of the property shown in "Exhibit C" is added at the time that the Declarant submits Phase III.

(b) "Additional Property" shall mean and refer to the property known as Phase II as more particularly described on "Exhibit B" and Phase III as more particularly described on "Exhibit C".

(c) "Architectural Standards Committee" shall mean and refer to the committee who shall be initially appointed by the Declarant and later subject to appointments by the Association's Board of Directors to approve exterior and structural improvements, additions, and changes within Monterey Shores PUD as provided in Article IX.

(d) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Monterey Shores PUD Homeowners Association, Inc.

(e) "Assessment" shall mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

(f) "Association" shall mean and refer to Monterey Shores PUD Homeowners Association, Inc., a North Carolina non-profit corporation.

(g) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(h) "By-Laws of the Association" or the "By-Laws" shall mean and refer to those By-Laws of Monterey Shores PUD Homeowners Association, Inc. which govern the administration and operation of the Association, as the same may be amended from time to time.

(i) "Commercial Site" shall mean any unimproved parcel of land designated on Exhibit C, intended for use as a site for improvements designed to accommodate commercial or business enterprises to serve residents of Monterey Shores PUD and/or the public, including but not limited to: business and professional offices, facilities for the retail sale of goods and services, banks and other financial institutions, churches, day care centers, restaurants, motels, theaters, lounges, recreational facilities, marinas, parking facilities, and gasoline stations, provided, however, that a "Commercial Site", until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property as a public or commercial site is placed of record, shall be deemed to be unimproved until an occupancy permit is granted by Currituck County.

(j) "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. Included within the Common Areas are the Recreational Amenities, maintenance areas, roads, streets, parking lots, walkways, sidewalks, jogging trails, bike paths, street lighting, tennis courts, tennis court lighting, pool, signage, pier and any docking facilities, ponds and boat launching facilities. The designation of any land and/or improvements as Common Areas and Open Spaces shall not mean or imply that the public at large acquires any easement of use of enjoyment therein.

(k) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

(l) "Declarant" shall mean Monterey Shores, Inc., a North Carolina corporation and any successor in interest.

(m) "Declarant Control Period" shall mean the period commencing on the date of the filing of that plat of Phase I of Monterey Shores PUD in the Office of the Register of Deeds of Currituck County, North Carolina and continuing until the earlier of: (1) the date five (5) years after the date of the first conveyance of a Lot in Monterey Shores PUD or the date Declarant has conveyed eighty five percent (85%) of the total number of Lots of Phases I, II, III and any Additional Phases of Monterey Shores PUD to owners other than Declarant during the Declarant Control Period.

(n) "Declaration" shall mean and refer to this Declaration of Covenants and all amendments thereof filed for record in the Office of the Register of Deeds of Currituck County, North Carolina.

(o) "Dwelling" shall mean and refer to any improved property for a single family residential occupancy use located within Monterey Shores PUD.

(p) "Improvements" shall mean and refer to any additions to a Lot including a dwelling, garage, carports, porches, terraces, balconies, decks, patios, courtyards, piers, bulkheads, boat houses, swimming pools, tennis courts and any other construction which has been approved by the Architectural Standards Committee of Monterey Shores PUD.

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

(r) "Lot" shall mean and refer to any unimproved portion of Monterey Shores PUD on which it is intended that a single family dwelling shall be constructed as such Lots are shown on Exhibits A, B and C. A parcel of land shall be deemed unimproved and is considered to be a Lot, rather than a Dwelling, until the improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof.

(s) "Open Space Common Areas" shall be those areas designated on the plats of Monterey Shores PUD as "Open Space Common Areas" and include ponds, common areas, abutting ponds, buffer zones and vegetated buffers.

(t) "Open Space Easement" shall be that space designated as "Open Space Easement" abutting any soundfront Lots within Monterey Shores PUD, which "Open Space Easement" shall be an easement appurtenant to the abutting soundfront Lots for the benefit and use of the abutting soundfront Owners.

(u) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated within Monterey Shores PUD, but notwithstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgage or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(v) "Phase I" shall mean all that property referred to in "Exhibit A" which property is hereby subjected to this Declaration of Protective Covenants.

(w) "Phase II" shall mean all that property referred to in "Exhibit B" which property Declarant reserves the right to subject to this Declaration of Protective Covenants at a future date.

(x) "Phase III" shall mean all that property referred to in "Exhibit C" which Declarant reserves the right to subject to this Declaration of Protective Covenants and which may be subjected as Phase III or portions of which may be subjected as Phase III and the remainder which may be subjected as Additional Phases. Declarant reserves the right to except those portions designated on "Exhibit C" as "Commercial Site" from this Declaration of Protective Covenants and any future submission.

(y) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

(z) "Recreational Amenities" shall include such recreational facilities and improvements as are from time to time located within the Common Areas and the easement areas of Monterey Shores PUD including, without limitation,

tennis courts, swimming pool, clubhouse, jogging trails, bike paths, pier, ponds, playgrounds, boat launching facility and any docking facilities.

### ARTICLE III.

#### PLAN OF DEVELOPMENT

Section 3.01 Phase I. The Property subject to this Declaration shall be that property consisting of Phase I as shown on that site plan prepared by Bissell Associates, Engineers, Planners & Surveyors, the same being referred to herein and incorporated herein by reference as "Exhibit A". All Lots within Phase I shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in Article IX hereof.

Section 3.02 Phase II. The Declarant hereby reserves the right to submit all or a portion of that property described in "Exhibit B" and known therein as Phase II to this Declaration. All Lots within Phase II shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in Article IX hereof.

Section 3.03 Phase III. The Declarant hereby reserves the right to submit portions of that property described in "Exhibit C" by adding those portions as Phase III or by adding a portion of "Exhibit C" as Phase III and the balance of "Exhibit C" to be added as Additional Phases. All Lots within Phase III shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in Article IX hereof.

Section 3.04 Reservation of Declarant's Rights. Declarant shall have the right, but not the obligation, for so long as Declarant owns any of the property described in "Exhibit A", to add portions of said properties described in "Exhibits B and C" to this Declaration, to make improvements and changes to all Common Areas and Open Spaces, including, without limitation, installation and maintenance of any improvements unto the Common Areas and Open Spaces, including the Recreational Amenities, changes in the location of the boundaries of any Lots owned by the Declarant or of the Common Areas and Open Spaces, installation and maintenance of any water, sewer and other utility systems and facilities, and installation of security and fresh water refuse facilities including the right to change portions of Open Spaces and Common Area amenities.

Section 3.05 Water and Sewer Facilities. Declarant, its affiliates, successors, or assigns, shall retain ownership of the water and sewer treatment facilities serving Monterey Shores PUD, including all lines, pipes, pumps, water towers or tanks, well sites, land upon which any plant or component parts are situated upon including effluent distribution areas, and other systems related thereto which are located within Monterey Shores PUD and which are not deemed to be a portion of a Lot or Dwelling pursuant to Section 3.05 hereof, and water and sewer treatment service shall be provided to Monterey Shores PUD pursuant to the terms of an agreement between the Association and Declarant, its affiliates, successors, or assigns. Notwithstanding the foregoing, Declarant, its affiliates, successors, or assigns owning such water and sewer treatment facilities shall have the right, but not the obligation, to at any time convey all or any part of such water and sewer treatment facilities to either the Association as a portion of the Common Areas, or to a public service district or a public or private utility. Notwithstanding the right to so convey such water and sewer treatment facilities, such conveyance may be subject to a retention by Declarant, its affiliates, successors, or assigns of the transferable and alienable right to supply water and sewer treatment services to



properties other than Monterey Shores PUD and from time to time to expand such facilities, at its cost and expense, in order to provide such services to such additional properties, provided that the provision of such services to such other properties shall not be permitted to the extent that it materially and adversely affects the adequacy of such services with respect to Monterey Shores PUD. In the event that any such services are provided to properties other than Monterey Shores PUD, the water and sewer charges for the Development, as well as for the other properties to be serviced by such water and sewer treatment facilities, shall be prorated on an equitable basis. Declarant reserves the right to withdraw from dedication those areas designated as "Well Fields and Wastewater Treatment" and related easements in the event that a governmental body or other related entity places in use a wastewater treatment system which requires mandatory connection by Lot Owners within Monterey Shores PUD.

Section 3.06 Interest Subject to Plan of Development. Every purchaser of a Lot shall purchase such Lot and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Declarant's plan of development as herein set forth, and Declarant shall have and does hereby specifically reserve the right to add the Additional Property as shown on "Exhibits B and C" or any portion or portions thereof to Monterey Shores PUD as hereinabove provided, and, with respect to each Lot located within the Additional Property, to convey to the purchaser thereof the title to the Lot and its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article III may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

Section 3.07 Declarant Control Period. Notwithstanding anything contained herein to the contrary, the Declarant shall have the right to appoint and designate at least two-thirds (2/3) of the members of the Board of Directors of Monterey Shores PUD Homeowners Association, Inc. during the Declarant Control Period.

#### ARTICLE IV.

#### PROPERTY RIGHTS

Section 4.01 General. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas and Open Spaces as established hereunder, which shall include, but not be limited to, membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his Lot.

Section 4.02 Owner's Easement of Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors in accordance with the By-Laws and the terms hereof, every Owner, his family, tenants, and guests shall have a non-exclusive right, privilege, and easement of use and enjoyment in and to the Common Areas and Open Spaces, such easement to be appurtenant to and to pass and run with title to each Lot, subject to the following provisions:

(a) The right of the Association to borrow money (i) for the purpose of improving Monterey Shores PUD, or any portion thereof, (ii) for acquiring additional Common Areas, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within Monterey Shores PUD, or (iv) for providing the services authorized herein, and, subject to the provisions of Section 5.02 hereof, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interests, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

(b) The rights and easements reserved to Declarant in Article IV hereof.

(c) The right of the Association to grant and accept easements as provided in Section 4.06 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant, for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to Monterey Shores PUD.

(d) The rights and easements reserved in Section 4.07 hereof for the benefit of the Association, its directors, officers, agents, and employees.

Section 4.03 Recreational Amenities. Subject to the terms and provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors, every Owner and his family, tenants, and guests shall have the non-exclusive right, privilege, and easement of access to and the use and enjoyment of the Recreational Amenities.

Section 4.04 Easements for Declarant. During the Declarant Control Period, Declarant shall have an alienable and transferable right and easement on, over, through, under, and across the Common Areas and Open Spaces for the purpose of constructing Dwellings and other improvements in and to the Lots and the Additional Property and for installing, maintaining, repairing, and replacing such other improvements to the Property (including the Recreational Amenities and other portions of the Common Areas and Open Spaces) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without any limitation, any improvements or changes permitted and described by Article III hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.

Section 4.05 Changes in Boundaries; Additions to Common Areas, Open Spaces and Well Fields. Declarant expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Common Areas, Open Spaces, well fields and any Lots, including the realignment of boundaries between adjacent Lots owned by Declarant, provided that any such change or realignment of boundaries shall not materially decrease the acreage of the Common Areas, Open Spaces, and Well Fields and shall be evidenced by a revision of or an addition to those plats

of Monterey Shores PUD which shall be recorded in the Plat Records of the Register of Deeds of Currituck County, North Carolina.

Section 4.06 Easements for Utilities and Drainage. The Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric, water, sewer and telephone systems, cable television service, and conduits for the purpose of bringing public services to Monterey Shores PUD, on, in or over an area within 10 feet of each Lot line fronting on a street or where a Lot line abuts a right-of-way or boundary line, five feet along the side lines of each Lot, and 10 feet along the rear line of each Lot, and such other areas as are shown on any recorded plats of Monterey Shores PUD. Declarant reserves unto itself, its successors and assigns, perpetual, alienable and releasable easements within Monterey Shores PUD and the right on, over and under the ground to cut drainways for surface water and make any grading of the soil whenever and wherever such action may appear to Declarant to be necessary to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

Section 4.07 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner.

Section 4.08 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant and its successors and assigns the alienable and transferable right and easement in and to the Property for the maintenance of signs, sales offices, construction offices, business offices, and model Dwellings, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion and improvement of Common Areas, and/or Common Spaces, and/or sale of Lots, or any Additional Property, for so long as Declarant owns any Lot primarily for the purpose of sale during the Declarant Control Period.

Section 4.09 Maintenance Easement. Subject to the terms of Section 4.02 hereof, there is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, the right to enter upon any Lot, such entry to be made by personnel with tractors or other suitable devices, for the purposes of mowing, removing, clearing, cutting or pruning underbrush, weeds or unsightly growth for the purpose of building or repairing any land contour or other earth work which in opinion of the Declarant or its agents detracts from or is necessary to maintain the overall beauty, ecology, setting and safety of the property. Such entrance shall not be deemed as trespass. Declarant, the Association and their successors and/or assigns may likewise enter upon any Lot to remove any trash which is collected without such entrance and removal being deemed as trespass. The provisions of this paragraph shall not be construed as an obligation on the part of the Declarant and/or the Association to undertake any of the foregoing.

Section 4.10 Environmental Easement. There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all Lots for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

Section 4.11 Wells. There is hereby reserved for the benefit of Declarant, the Association, and their respective affiliates, agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement (i) to pump water from lagoons, ponds, marinas, and other bodies of water located within Monterey Shores PUD for the purpose of irrigating any portions of the Development, (ii) to drill, install, locate, maintain, and use wells, pumping stations, water towers, siltation basins and tanks, and related water and sewer treatment facilities and systems within the Common Areas and Open Spaces, including within any portion of the Recreational Amenities.

Section 4.12 Title to Common Areas and Open Spaces. The Declarant shall retain the legal title to the Common Areas and Open Spaces until such time as it has completed improvements, if any, thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision to the contrary herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey the Common Area to the Association not later than five (5) years from the date of the first sale of a Lot by the Declarant or when eighty-five percent (85%) of the Lots are sold by the Declarant, whichever occurs first. The Association shall be obligated to accept conveyance in accordance with this paragraph.

Section 4.13 Open Space Easements. It is hereby reserved to those soundfront Lot Owners in Monterey Shores PUD a perpetual easement for the purposes of ingress and egress from those soundfront Lots to the Sound across that area abutting a soundfront Lot designated as "Open Space Easement". This perpetual easement is restricted to the right of ingress and egress and to the construction of the following improvements: pier, boat house and gazebo subject to any necessary governmental permits and architectural approval of the Architectural Standards Committee as set forth in Article IX herein.

## ARTICLE V.

### MEMBERSHIP

Section 5.01 Membership. Every person or entity who is a record owner of a fee simple interest in any Lot is subject by this Declaration to assessment by the Association and shall be a member of the Association; provided, however, that any such person or entity holding such interest merely as a security for the performance of an obligation shall not be a Member. The requirement of membership shall apply to any mortgagee or trustee beneficiary acquiring title by foreclosure or otherwise pursuant to the mortgage or deed of trust instrument.

Section 5.02 Voting Rights. The Association shall have one class of voting membership and Members shall be entitled to one vote for each Lot in which they hold an interest required for membership by Section 5.01 of this Article. When more than one person or entity holds such an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be

exercised as they among themselves determine and such persons shall designate one (1) person to vote for their Lot, but in no event shall more than one vote be cast with respect to any such Lot.

Section 5.03 Control of the Board of Directors of the Association. During the Declarant Control Period, the Declarant shall have the right to appoint two-thirds (2/3) of the Board of Directors.

## ARTICLE VI.

### MAINTENANCE

Section 6.01 Responsibilities of Owners. Each Lot Owner shall be responsible for all maintenance and repair of their Lot together with all other improvements thereon or therein and all lawns, landscaping of grounds on and within the Lot shall be the responsibility of the owner of such Lot. Each owner shall be responsible for maintaining its Lot in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all improvements and other structures and all lawns, trees, shrubs, hedges, grass, walkways, driveways and other landscaping. As provided in Section 6.02(b) hereof, each owner shall be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such owner but which responsibility such owner fails or refuses to discharge. No owner shall decorate, change, or otherwise alter the appearance of any portion of the exterior of any improvements within a Lot, except when traditional seasonal ornamental decorations are appropriate and which are in the opinion of the Architectural Standards Committee appropriate, unless such decorations, changes or alterations are first approved in writing by the Architectural Standards Committee as provided in Article IX hereof or do any work which, in the reasonable opinion of the Architectural Standards Committee would jeopardize the soundness and safety of Monterey Shores PUD, reduce the value thereof, or impair any easement thereto without in every such case obtaining the written approval of the Architectural Standards Committee.

Section 6.02 Association's Responsibility. Except as may be herein otherwise specifically provided the Association shall maintain and keep in good repair all portions of the Common Areas which responsibility shall include the maintenance, repair, and replacement of the Recreational Amenities, all roads, walks, trails, ponds, parking Lots, landscaped areas and other improvements situated in the Common Areas or within easements encumbering Lots pursuant to Section 4.07 hereof, utility lines, pipes, plumbing, wires, conduits, and related systems which are part of the Common Areas and which are not maintained by public utilities or other persons, and lawns, trees, shrubs, hedges, grass, walkways, driveways and other landscaping situated within or upon the Common Areas. No diminution or abatement of assessments or recreational charges shall be claimed or allowed by reason of alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

In the event that the Declarant or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the

maintenance, cleaning, repair, or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, shall give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. In such event, the Owner shall have twenty (20) days within which to complete the same in a good workmanlike manner or in the event that such maintenance, cleaning, repairs, or replacement is not capable of completion within twenty (20) days, to commence said maintenance, cleaning, repairs, or replacement and diligently proceed to complete the same in a good workmanlike manner within a reasonable time frame. In the event of the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to provide) any such maintenance, cleaning, repairs, or replacement, the sole costs and expense of which shall be added to and become a part of the assessment to which the Owner and his Lot shall be subject and shall become a lien against such Lot. In the event that the Declarant undertakes such maintenance, cleaning, repairs, or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

## ARTICLE VII.

### ASSESSMENTS

Section 7.01 Purpose of Assessments. The assessments for Common Expenses provided for herein shall be used for the general purposes of maintenance of roads and improvements, promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Monterey Shores PUD, and maintaining the Development and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

Section 7.02 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) annual assessments, such assessments to be established and collected as provided in Section 7.03 hereof, (b) special assessments, such assessments to be established and collected as provided in Section 7.04 hereof, (c) individual or specific assessments against any Lot established pursuant to the terms of this Declaration. Any such assessments, together with late charges, simple interest at the rate of eighteen per cent (18%) per annum, and court costs and reasonable attorneys' fees incurred to enforce or collect such assessments, shall be a lien on the Lot pursuant to the provisions of Section 7.07 herein. In the event of co-ownership of any Lot, all of such Co-Owners shall be jointly and severally liable for the entire amount of such assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, provided that unless otherwise provided by the Board, the annual assessments shall be paid in one lump sum.

Section 7.03 Computation of Annual Assessments. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses during the coming year, such budget to

include a capital contribution or reserve account if necessary for the capital needs of the Association. The Board shall cause the budget and the proposed total of the annual assessments to be levied against Lots for the following year to be delivered to each Owner at least fifteen (15) days prior to such meeting. The total annual assessments shall be divided among the Lots equally, so that each Lot shall be subject to equal annual assessments. Upon the addition of Phases II and/or III of Monterey Shores PUD, assessment shall continue to be equal and the Lots being added to Monterey Shores PUD shall thenceforth pay assessments which are equal to those imposed upon Lots previously in Monterey Shores PUD. In such event, the Association's budget shall be accordingly revised by the Board, without the necessity of approval by the Owners, to include Common Expenses and assessments related to such additional Lots. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Declarant, for so long as Declarant has the authority to appoint and remove directors and officers of the Association, or (ii) a vote of a majority of the votes of the Owners who are voting in person or by proxy at such meeting. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Section 7.04 hereof. The Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

(a) management fees and expenses of administration, including legal and accounting fees;

(b) utility charges for utilities serving the Common Areas and charges for other common services for Monterey Shores PUD, including trash collection and security services, if any such services or charges are provided or paid by the Association;

(c) the cost of any policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, Officers and Directors liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;

(d) the expenses of maintenance, operation, and repair of those portions of the Common Areas and Open Spaces which are the responsibility of the Association under the provisions of this Declaration;

(e) the expenses of maintenance, operation, and repair of other amenities and facilities serving Monterey Shores PUD, the maintenance, operation, and repair of which the Board from time to time determines to be in the best interest of the Association;

(f) the expenses of the Architectural Standards Committee which are not defrayed by plan review charges;

(g) ad valorem real and personal property taxes assessed and levied against the Common Areas and Open Spaces;

(h) the expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners and their families, tenants, guests, and invitees;

(i) such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including, without limitation, taxes and

governmental charges not separately assessed against Lots;  
and

(j) the establishment and maintenance of a reasonable reserve fund or funds (A) for maintenance, repair, and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be maintained, repaired, or replaced on a periodic basis, (B) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (C) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

Section 7.04 Special Assessments. In addition to the annual assessments authorized above, the Association, acting through its Board of Directors, may levy, in any assessment year, special assessments for Common Expenses, applicable to that year only, provided that except as otherwise permitted in the By-laws of the Association, any such assessment shall be approved by (i) Declarant during the Declarant Control Period and (ii) by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 7.06 hereof. The Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such special assessments are to be prorated among the Lots equally as provided with respect to annual assessments.

Section 7.05 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests, or invitees of any Owner shall be specially assessed against such Owners and their respective Lots. The individual assessments provided for in this Section 7.05 shall be levied by the Board of Directors and the amount and due date of such assessment so levied by the Board shall be as specified by the Board.

Section 7.06 Notice of Meeting and Quorum. Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under Sections 7.03 and 7.04 hereof, shall be sent to all members not less than fifteen (15) days nor more than forty five (45) days in advance of such meetings. With respect to annual meetings, the presence of members or proxies entitled to cast over forty percent (40%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be the presence in person or by proxy of members having one-fourth (1/4) of the total votes of the Association. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7.07 Liens. All sums assessed against any Lot pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be a lien upon Lot, which lien may be claimed by notice and enforced by civil action in the nature of and enforcement of laborer's and materialmen's lien against real property pursuant to the provisions of Chapter 44(A) of the North Carolina General Statutes or in the discretion of the Association by civil action in the nature of the foreclosure of the lien.

Section 7.08 Effect of Nonpayment; Remedies of the Association. Any assessments of an Owner or any portions thereof which are not paid when due shall be delinquent. Any assessment



delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of eighteen percent (18%) per annum. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association may as the Board shall determine institute suit to collect such amounts or enforce its lien pursuant to the provisions of Section 7.07 herein. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot, and an Owner shall remain personally liable for assessments, interest, and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot.

Section 7.09 Exempt Property. At such time as Declarant may add Phases II, III and any other Additional Phases to Monterey Shores PUD, Declarant may in its discretion exempt from the assessments provided herein any charges and liens which may be created herein against any commercial areas of Monterey Shores PUD. All properties owned by Declarant including any Lots within Monterey Shores PUD shall be exempt from all assessments provided in Article VII herein.

#### ARTICLE VIII.

##### ADMINISTRATION

Section 8.01 Common Areas and Open Spaces. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the management and control of the Common Areas, Open Spaces and all improvements thereof (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. As provided in Section 3.07 hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing Monterey Shores PUD, Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association during the Declarant Control Period.

Section 8.02 Duties and Powers. The duties and powers of the Association shall be those set forth in this Declaration, the By-laws of the Association and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association.

Section 8.03 Rules and Regulations. As provided in the By-laws of the Association, the Board of Directors may make and enforce reasonable rules and regulations governing the use of the Lots and Common Areas and Open Spaces which rules and regulations shall be consistent with the rights and duties established by this Declaration.

#### ARTICLE IX.

##### ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

Section 9.01 Purpose. In order to preserve the natural setting and beauty of Monterey Shores PUD, to establish and preserve a harmonious and aesthetically pleasing design for Monterey Shores PUD, and to protect and promote the value of Monterey Shores PUD, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article IX. Every grantee of any interest in Monterey Shores PUD, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article IX.

Section 9.02 Architectural Standards Committee. The Board of Directors shall establish the Architectural Standards Committee which shall consist of up to five (5) (but not less than three (3)) members, all of whom shall be Owners and who may or may not be members of the Board of Directors, provided that prior to the termination of Declarant's right to appoint and remove officers and directors of the Association, such members do not have to be Owners. The regular term of office for each member shall be one (1) year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. Notwithstanding the foregoing to the contrary, any member appointed to the Architectural Standards Committee by the Board shall be subject to the prior approval of Declarant until that date which is three (3) years from and after the date on which Declarant's right to appoint and remove officers and directors of the Association is terminated. The Architectural Standards Committee shall elect a chairman and he, or in his absence, the vice chairman, shall be the presiding officer at its meetings. The Architectural Standards Committee shall meet at least once in each calendar month, as well as upon call of the chairman, and all meetings shall be held at such places as may be designated by the chairman. Three (3) members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Architectural Standards Committee shall constitute the action of the Architectural Standards Committee on any matter before it. The Architectural Standards Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Standards Committee in performing its functions set forth herein. Each member of the Architectural Standards Committee may be paid a stipend or honorarium as from time to time determined by the Board.

The Architectural Standards Committee shall be responsible for preparing a set of Architectural Guidelines and all Owners shall be responsible for obtaining a set of the Architectural Guidelines from the Architectural Standards Committee PRIOR to commencing any design for any improvements within Monterey Shores PUD.

Section 9.03 Permitted Improvements. No improvements of any nature whatsoever shall be constructed, altered, added to, or maintained upon any part of Monterey Shores PUD, except (i) for Dwellings and other improvements which are constructed by Declarant, (ii) such improvements as are approved by the Architectural Standards Committee in accordance with this Article IX, or (iii) improvements which pursuant to this Article IX do not require the consent of the Architectural Standards Committee.

Section 9.04 Construction of Improvements. All buildings, structures, or other improvements on or with respect to any Lots shall be in compliance with the building restrictions set forth in Section 9.08 herein, provided the Architectural Standards Committee shall be empowered to grant variances with respect to such set-back lines subject to conformance with the ordinances of Currituck County. To assure that Dwellings and other structures will be located so that the maximum view, privacy, and breeze will be available to each dwelling or structure, Dwellings and structures will be located with regard to the topography of each Lot taking into consideration the location of trees and vegetation and other aesthetic and environmental considerations, as well as the precise site and location of any other Dwellings or structures within Monterey Shores PUD.

The Architectural Standards Committee, in its sole discretion, may require that any contractor and/or subcontractor for any planned improvements within Monterey Shores PUD post payment and/or performance bonds with the Architectural Standards Committee to assure that such contractor or subcontractor shall satisfactorily complete such improvements, such bonds to be in the name of the Association and to be in form and amount satisfactory to the Architectural Standards Committee. Furthermore, the Architectural Standards Committee, in its sole discretion, may require that an Owner place in escrow with the Architectural Standards Committee a sum of no more than \$1,000.00 in order to assure the completion of all improvements, including landscaping, within the time periods provided in this Section 9.04 and in Section 9.06 hereof. The exterior of any improvement permitted by this Declaration shall be completed within one year after the construction of same shall have been commenced, except where the Architectural Standards Committee allows for an extension of time because such completion with such time is impossible or would result in great hardship to the Owner or builder thereof due to strikes, national emergencies, fires, floods, lightning, hurricanes, or other casualties. In the event that such improvements or landscaping are not completed within the provided periods, the Architectural Standards Committee shall be entitled to collect on or enforce any payment or performance bonds required hereunder so as to ensure the proper completion of any such improvements. Furthermore, the Architectural Standards Committee shall be entitled to retain any sums so held in escrow as a penalty for such failure to complete, and such sums shall be remitted to and shall be the property of the Association. Any such sums so held in such escrow shall, at the discretion of the Architectural Standards Committee, be invested so as to earn interest, and any interest earned thereon shall be paid to the Owner making such escrow deposit, if his escrow deposit is refunded, or, if remitted to the Association, shall be the property of the Association.

Dwellings may not be temporarily or permanently occupied until an occupancy permit has been obtained.

Section 9.05 Architectural Approval. To preserve the architectural and aesthetic appearance of Monterey Shores PUD, no construction of improvements of any nature whatsoever shall be commenced or maintained by any Owner other than Declarant, with respect to the construction or exterior of any dwelling or with respect to any other portions of Monterey Shores PUD including, without limitation, the construction or installation of sidewalks, driveways, parking lots, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, docks, wharves, bulkheads, boat slips, boat houses, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until three (3) copies of the plans and specifications and related data (including, if required by the Architectural Standards Committee, a survey showing the location of trees of four (4) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot), showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design, location, and appearance in relation to surrounding structures and topography by the Architectural Standards Committee. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Standards Committee, and the other copies shall be returned to the Owner or Association marked "approved" or "disapproved". The Architectural Standards Committee shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, inspectors, or attorneys

retained in accordance with the terms hereof. The fee initially established for such review shall be \$200.00 for each submission, and the Architectural Standards Committee shall have the right to increase this amount from time to time. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within his dwelling or alterations within any building or structures which he owns or maintains, without the necessity of approval or review by the Architectural Standards Committee. The Architectural Standards Committee shall have the right to establish a maximum percentage coverage of a Lot. Following approval of any plans and specifications by the Architectural Standards Committee, representatives of the Architectural Standards Committee shall have the right during reasonable hours to enter upon and inspect any Lot, or other improvements with respect to which construction is underway, to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the Architectural Standards Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Architectural Standards Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the Architectural Standards Committee fails to approve or disapprove in writing any proposed plans and specifications within forty-five (45) days after such plans and specifications shall have been submitted, such plans and specifications will be deemed to have been expressly approved. Upon approval of plans and specifications, no further approval under this Article IX shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications may be based by the Architectural Standards Committee upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, so long as such ground is not arbitrary or capricious.

Section 9.06 Landscaping Approval. To preserve the aesthetic appearance of Monterey Shores PUD, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by any Owner, other than Declarant, unless and until the plans therefor have been submitted to and approved in writing by the Architectural Standards Committee. The provisions of Section 9.05 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Such plans shall include a calculation of the ratio of the area to be covered by grass lawns versus the area to be left in a natural state, and the Architectural Standards Committee shall be entitled to promulgate standards with respect to such ratios. All of the landscaping of Lots and Dwellings must be completed within ninety (90) days of occupancy or substantial completion of the Dwelling, whichever date shall first occur.

Section 9.07 Approval Not a Guarantee. No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, nor the Architectural Standards Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article IX,

nor any defects in construction undertaken pursuant to such plans and specifications.

Section 9.08 Building Restrictions. No Dwelling or other structure shall be constructed on a Lot which has a height exceeding thirty five (35) feet above the elevation of the average grade of the Lot. All Dwellings constructed on interior Lots shall have a minimum of 1,600 square feet of "living area" for any one story or one and 1/2 story Dwelling and a minimum of 1,800 square feet of "living area" for any two story Dwelling. All soundfront Lots shall have a minimum of 2,200 square feet of "living area". No building, including porches, eaves, steps and similar fixtures shall be located on any Lot within twenty (20) feet of the front line nor closer than ten (10) feet from the side lines thereof, nor closer than twenty (20) feet from the rear property line. Side setbacks on any street shall be ten (10) feet.

Section 9.09 Use of Lots and Dwellings. Each Lot and dwelling shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. No Lot shall be used for access to any adjoining Lot or other property. When an Owner acquires two or more Lots then, and in that event, the adjoining one or more Lots may be used as one (1) building site and the side Lot lines and easements referred to therein shall apply to the outside perimeter line of the combined Lots.

Section 9.10 Boats and Watercraft. No persons shall be entitled to live or reside on any yacht, boat, or other watercraft from time to time docked, moored, or otherwise located within Monterey Shores PUD, provided that the Board of Directors may establish rules and regulations permitting the temporary occupancy of any such yachts, boats, or other watercraft. In addition, no sewage effluent, treated or otherwise, shall be discharged from any yacht, boat, or other watercraft into any waters within or abutting Monterey Shores PUD.

Section 9.11 Exterior Appearance. No chain link fences shall be permitted within Monterey Shores PUD, except with regard to maintenance areas within the Common Areas. Also, any unenclosed garages or carports must be adequately screened from Street views. Further, no foil or other reflective materials shall be used on any windows for sun screens, blinds, shades, or other purposes, nor shall any window-mounted heating or air-conditioning units be permitted. Except within screened service yards, outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed, or maintained, nor shall any clothing, rugs, or other items be hung on any railing, fence, hedge, or wall.

Section 9.12 Signs. Except as may be required by legal proceedings, no signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any improvements located within Monterey Shores PUD, without the express written permission of the Architectural Standards Committee. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the Architectural Standards Committee and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 9.12 shall not apply to Declarant. In addition, the Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas and within those easement areas established in Section 4.06 hereof.

Section 9.13 Antennas. No television antenna, radio receiver, or other similar device shall be attached to or installed on any portion of Monterey Shores PUD, unless contained

entirely within the interior of a building or other structure, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot, which may unreasonably interfere with the reception of television or radio signals within Monterey Shores PUD; provided, however, that Declarant and the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within Monterey Shores PUD, and should cable television services be unavailable and adequate television reception not be otherwise available, then an Owner may make written application to the Architectural Standards Committee for permission to install a television antenna.

Section 9.14 Security Systems. In the event that either Declarant or the Association shall install a central security system within Monterey Shores PUD, with the capability of providing security services to each Dwelling within Monterey Shores PUD, then no Owner shall be entitled to install or maintain any alternative security systems within a Dwelling, other than security systems which are appurtenant to and connected with such central security system, without obtaining the prior written consent and approval of the Board of Directors.

Section 9.15 Water Wells and Septic Tanks. No private water wells may be drilled or maintained on any Lot so long as Declarant or an affiliate or the Association, a public service district, any governmental unit or any public or private utility shall have installed a water distribution line within 100 feet of such Lot. Furthermore, no septic tanks or similar sewage facilities may be installed or maintained on any Lot so long as Declarant or an affiliate or the Association, a public service district, any governmental unit or any public or private utility shall have installed a sanitary sewer line within 100 feet of said Lot. Notwithstanding these restrictions, wells may be approved by the Architectural Standards Committee for the use of irrigation and watering of landscaping.

Section 9.16 Pets. No animals, livestock, birds, or poultry of any kind shall be raised, bred, or kept by any Owner upon any portion of Monterey Shores PUD, provided that a reasonable number of generally recognized house pets may be kept in Dwellings, subject to rules and regulations adopted by the Association, through its Board of Directors, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Areas and Open Spaces. Pets shall be under leash at all times when walked or exercised in any portion of the Common Areas and Open Spaces, and no pet shall be permitted to leave its excrement on any portion of the Common Areas, Open Spaces or Lots and the Owner of such pet shall immediately remove the same. Upon the written request of any Owner, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 9.16, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the owner of a particular pet to remove such pet from Monterey Shores PUD if such pet is found to be a nuisance or to be in violation of these restrictions.

Section 9.17 Nuisances. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of Monterey Shores PUD, nor shall any nuisance or odors be permitted to exist or operate upon or arise from Monterey Shores PUD, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or

occupying any other portions of Monterey Shores PUD. Noxious or offensive activities shall not be carried on in any Lot.

Section 9.18 Motor Vehicles, Trailers, Boats, Etc. Each Owner shall provide for parking of automobiles off streets and roads within Monterey Shores PUD prior to occupancy of any Dwellings owned and maintained by such Owner. There shall be no outside storage or parking upon any Lot, or within any portion of the Common Areas, of any mobile home, trailer, motor home, tractor, truck (other than pickup trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft (other than in boat slips, boat houses, or other docking facilities), boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices. Furthermore, although not expressly prohibited hereby, the Board of Directors may at any time prohibit mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, and other similar vehicles, or any of them, from being kept, placed, stored, maintained, or operated upon any portion of Monterey Shores PUD if in the opinion of the Board of Directors such prohibition shall be in the best interest of Monterey Shores PUD. No Owners or other occupants of any portion of Monterey Shores PUD shall repair or restore any vehicle of any kind upon or within any Lot, dwelling, or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

Section 9.19 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Dwellings or the developing of Lots, Dwellings, Common Areas, and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, provided that the location of any construction trailers of any assignees of Declarant's rights under this Section 9.19 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwellings as model residences, and to use any dwelling as an office for the sale of Lots and/or Dwellings and for related activities.

## ARTICLE X.

### GENERAL PROVISIONS

Section 10.01 Duration. All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, Declarant for a period of fifty (50) years from the date of this Declaration, after which time, all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a two-thirds majority of the then owners of the Lots has been recorded, agreeing to change said covenants in whole or in part, provided, however, that no such agreement to change shall be effective unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 10.02 Notices. Any notice required to be sent to owner, under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records

of the Association at the time of such mailing. Notice to any one of the Owners, if title to a Lot is held by more than one, shall constitute notice to all Owners of a Lot.

Section 10.03 Enforcement. In the event of any violation or breach of any of the restrictions contained herein by any property owner or agent of such owner, Declarant, its successors or assigns, or the Owners of Lots within Monterey Shores PUD, or any of them, jointly or severally, shall have the right to proceed in law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach of any of the restrictions set out above, but before litigation may be instituted ten (10) days written notice of such violation shall be given to the Owner or his agent. The failure to enforce any right, reservation or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction contained in this Declaration shall in no way affect any of the other restrictions, but they and each of them shall remain in full force and affect.

Section 10.04 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive.

Section 10.05 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 10.06 Notice of Sale, Lease, or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot or Dwelling, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

Section 10.07 No Trespass. Whenever the Association, Declarant, the Architectural Standards Committee, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of Monterey Shores PUD, the entering thereon and the taking of such action shall not be deemed to be trespass.

Section 10.08 Amendment of Declaration. This Declaration may be amended by a majority vote of the Owners including the Declarant. If any amendment to the Declaration creates an inconsistency in the By-Laws to the extent such inconsistency exists, the Declaration shall control. No amendment to this Declaration shall be effective until recorded in the Office of the Register of Deeds of Currituck County, North Carolina.

IN WITNESS WHEREOF, the duly authorized officers of the undersigned Declarant have executed this Declaration of



Protective Covenants under seal, this the \_\_\_\_ day of \_\_\_\_\_, 1988.

DECLARANT

MONTERAY SHORES, INC.

By: \_\_\_\_\_ (SEAL)  
President

ATTEST:

By: \_\_\_\_\_  
Secretary

[CORPORATE SEAL]

NORTH CAROLINA  
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, personally came before me this day and acknowledged that \_\_\_\_\_ he is \_\_\_\_\_ Secretary of Monterey Shores, Inc., a North Carolina Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its Corporate Seal and Attested by \_\_\_\_\_, as its \_\_\_\_\_ Secretary.

WITNESS my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 1988.

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

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

[STAMP/SEAL]