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DARE CO, NC

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NORTH CAROLINA  
DARE COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MARSH VIEW SUBDIVISION

This Declaration of Covenants, Conditions and Restrictions made and declared this 22nd day of June, 2004, by TRITON PROPERTIES, LLC, a Virginia limited liability company hereinafter called "Declarant".

WITNESSETH:

WHEREAS, Declarant is the developer and owner of certain real property shown on that plat entitled "Subdivision Plat of Marsh View Lots 1 through 10", prepared by Seaboard Surveying and Planning, Inc., which map or plat is duly recorded in Plat Cabinet F, Slides 268, 269, and 270, Dare County Registry, (Plat);

WHEREAS, Declarant intends to develop nine of the lots and property shown on said Plat under a common scheme of development so that the restrictions and declarations herein imposed shall inure to the benefit of each and every purchaser of lots or parcels shown on the aforesaid described Plat (hereinafter "the Subdivision");

WHEREAS, it is the purpose of this Declarant to declare and publish the covenants, conditions and restrictions which shall apply to the lands shown on the aforesaid described Plat;

THEREFORE, Declarant does hereby declare and make known and publish that the following covenants, conditions and restrictions shall run with the lands and lots shown on the Plat and said covenants, conditions and restrictions shall be binding on all parties, entities or person purchasing real property shown on the Plat or their heirs or designees or any other person claiming under them.

THE COVENANTS, CONDITIONS AND RESTRICTIONS ARE AS FOLLOWS:

**PART ONE. USES**

1. No lots except Lot 10 included in this Declaration shall be used or occupied for the manufacture or sale of any



articles or for any commercial purposes of any kind or character whatsoever (including home occupations), or for the carrying on of any business, or a hotel, motel, rooming house or boarding house. This restriction does not prohibit the rental of a residence as a vacation home.

2. No lot may be used as a street, lane, way or easement over which access might be obtained to adjacent properties not a part of this subdivision without the specific written consent of Declarant. No lot except Lot 10 shall have vehicular access to N.C. Highway 12 except as follows:

a. Lots 1 and 2 shall have vehicular access along the "20' X 20' Common Access Easement" between the aforesaid Lots 1 and 2 as shown on the above referenced Plat.

b. Lots 3 and 4 shall have vehicular access along the "20' X 20' Common Access Easement" between the aforesaid Lots 3 and 4 as shown on the above referenced Plat.

c. Lots 5, 6, 7, 8 and 9 shall have vehicular access along an area designated as follows:

BEGINNING at an iron pin or other marker located in the North margin or right-of-way of N.C. Highway 12, said point of beginning being also located in the Southeast corner of Lot 5 of the aforesaid plat; thence along the North margin or right-of-way of the aforesaid N.C. Highway 12 along a curve to the left with a radius of 1,455 feet, an arc distance of 87.64 feet to an iron pin or other marker; thence continuing along the North margin or right-of-way of N.C. Highway 12 along a curve to the left with a radius of 1,455 feet, an arc distance of 103.16 feet to an iron pin or other marker; thence continuing along the North margin or right-of-way of N.C. Highway 12 along a curve to the left with a radius of 1,455 feet, an arc distance of 118.15 feet to an iron pin or other marker located in the Southeast corner of Lot 9 as shown on the aforesaid plat; thence along the South line of the aforesaid Lot 9 North 36 deg. 47 min. 02 sec. West 37.13 feet to a point; thence along a curve to the left with a radius of 1,421 feet, an arc distance of 13.43 feet to a point; thence continuing along a curve to the left with a radius of 35.00 feet, an arc distance of 29.53 feet to a point; thence continuing along a curve to the right with a radius of 25 feet, an arc distance of 16.31 feet to a point; thence along a curve to the right with a radius of 1,429 feet, an arc distance of 49.32 feet to a point; thence along a curve to the right with a radius of 1,429 feet an arc distance of 101.48 feet to a point; thence along a curve to the right with a radius of 1,429 feet an arc distance of 13.87 feet to a point; thence along a curve to the right with a radius of 150.00 feet an arc distance of 35.83 feet to a point; thence along a curve to the left with a radius of 35.0 feet an arc distance of 28.90 feet to a point; thence along a curve to the right with a radius of 1,431.00 feet an arc distance of 19.33 feet to a point located in the East line of the aforesaid Lot 5; thence along the East line of the aforesaid Lot 5 South 48 deg. 37 min.



37 sec. East 26.34 feet to the point and place of beginning.

This being that certain area designated as "Common Access Easement" between and along Lots 5, 6, 7, 8, and 9" as shown on the aforesaid Plat, said area hereinafter referred to as "Common Access Easement".

3. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot except that dogs and cats, or any common household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose.

4. Lots included in this Declaration, except Lot 10, shall be used exclusively for residential purposes (to include single-family residences, duplexes, or triplexes, as same may be permitted under the applicable Dare County ordinances), but when one owner acquires two or more adjoining lots, then and in that event, the adjoining one or more lots may be used as one building site in which event the side line easements referred to herein shall apply to the outside perimeter property line of the combined lots acquired by said one property owner. No lot may be resubdivided without the written joinder of the Declarant, and under no circumstances may a lot be resubdivided for the purpose of creating additional lots. However, there may be added to or combined with any lot as shown on the Plat all or a portion of another lot or lots to produce a larger building site.

5. No structure of a temporary character, including but not limited thereto, trailer of any kind, tent, shack, detached garage, barn, or other outbuilding shall be used or allowed on any lot at any time either temporarily or permanently, except such temporary structures as may be necessary for the storage of materials or the convenience of workmen during the erection of residences upon said lands, and such temporary structure provided for the storage of materials or the convenience of workmen shall be used on any lot at any time as a residence either temporarily or permanently.

6. No noxious or offensive activity shall be carried on upon a lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

#### **PART TWO. EASEMENTS AND SETBACKS**

7. The Developer reserves right-of-way and easements for water, gas, sewer, stormwater, electric, telephone and cable TV services, together with all appurtenances appertaining thereto, for the benefit of Cape Hatteras Electric Membership Company and others on, over, and across each lot, 10 feet in width contiguous with all street frontages, 10 feet in width contiguous with all side lines and 15 feet in width contiguous with wetlands lines delineated on the Plat, and such other easements as may be shown on the recorded plat.

8. (a) Owners of Lots 5, 6, 7, 8 and 9 shall have a non-exclusive easement over, and use of the "Common Access Easement", as shown on the above referenced Plat.

(b) Owners of Lots 1 and 2 shall have a non-exclusive easement over and use of the "20' X 20' Common Access Easement" applicable to the said two lots as shown on the above referenced Plat.



(c) Owners of Lots 3 and 4 shall have a non-exclusive easement over and use of the "20' X 20' Common Access Easement" applicable to the said two lots as shown on the above referenced Plat.

9. Walls and fences shall be ornamental in character and may not extend into a front yard any further than ten feet from the abutting easement right of way.

10. No building or structure, including porches and steps, shall be erected or placed on any lot closer than the setback lines shown on the referenced Plat.

### PART THREE. STRUCTURES

11. The exterior of any residential structure or other improvements or alteration must be completed within nine (9) months of the commencement of construction of said improvements. Exteriors must be approved by the Declarant as outlined herein.

12. All improvements and land-disturbing activities on any lot shall first be approved by the Declarant or assigns as outlined herein.

(a) All building plans and specifications for any and all structures to be constructed in the Subdivision, including any and all exterior additions to or change or alteration thereto, shall be approved by the Declarant prior to the beginning of construction. Declarant's address is c/o Billy Birdsong, 14044 Osborn Lane, Carlton, VA 23314. All review and approval authority reserved by the Declarant herein may also be exercisable and vested in a Review Board which may be established by Declarant after the sale or conveyance by Declarant of five of the lots in the Subdivision. The Review Board shall be comprised of at least two lot owners in the Subdivision. "Declarant" as used in this paragraph shall also include the Review Board. Front, rear and side elevations, together with specifications on the exterior siding, square footage, windows, doors, roofing and exterior colors must first be submitted to the Declarant for review and approval prior to the beginning of construction, to include site work. In the event that Declarant fails to approve or reject such plans within forty-five (45) days of receipt of same, said plans and specifications shall be deemed to be approved.

(b) All landscaping, tree cutting and site preparation work to be performed shall be approved by the Declarant prior to any such landscaping, tree cutting and site preparation work being done. Plans must be submitted for approval to the Declarant and shall include a site plan with lot lines, building outlines, driveways and parking areas. Identification of trees requested to be removed is required. Landscaping plans shall include sufficient cover to screen air conditioning compressor, trash receptacle areas.

Every effort shall be made to preserve existing trees during construction except those which the owner has written consent of the Declarant to remove. Fencing and barricades should be employed to prevent root compaction. Trees damaged during construction should be treated as soon as possible.



(c) Despite setbacks established on the Plat or by Dare County Zoning Ordinance, the site and location of any residential dwellings or other structure upon any lot shall be controlled by and must be approved by the Declarant.

(d) All trash and debris shall be cleaned from the site within thirty (30) days after completion of the main structure on any lot. During construction trash and debris shall be removed from the site to prevent unsightly accumulations and the resulting spread thereof to adjacent property. Upon a lot owner's failure to collect and dispose of such trash and debris within thirty (30) days after receipt of written notice from the Declarant, Declarant may collect and dispose of same at the lot owner's expense.

(e) No structure, planting or other material may be placed in such a manner or location as to impede the installation and maintenance of utilities and drainage facilities, unless the location and manner of use thereof has been first approved in writing by the Declarant.

13. All building, structures and their appurtenances shall be maintained in a suitable state of repair; and in event of destruction by fire or other casualty, premises are to be cleared and debris removed within ninety (90) days from the date of such casualty.

14. No structure shall be used at any time either temporarily or permanently as a residence until the exterior is completed in accordance with Paragraph 11 above and all sanitary facilities are fully operative and appropriate occupancy permit has been issued by governmental officials.

15. No residential structure which contains fewer than 1,800 square feet of enclosed and heated living area may be constructed on any lot or combination of lots.

16. Areas lying below residential structures except porches must be enclosed by wood slats placed horizontal or vertical, separated by open spaces of equal width to be placed in those areas not enclosed by walls of storage rooms or garages. Slats may either remain natural woodgrain unpainted, be painted white or the color of the residence siding.

17. Prior to commencement of construction of improvements, or clearing of any lot, other than by hand, the owner of a lot shall place a temporary or permanent driveway to provide entry to the lot from "Common Access Easement" for Lots 5, 6, 7, 8 and 9 and the "20' X 20' Common Access Easement" for Lots 1 and 2, and the "20' X 20' Common Access Easement" Lots 3 and 4. A 16 gauge corrugated culvert shall be placed under this driveway and in line with the existing roadway swells. The culvert shall be a minimum of 15 inches in diameter, at least 20 feet long, and set to ditch grade by a registered land surveyor or engineer.

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

#### **PART FOUR. HOMEOWNERS ASSOCIATION & MAINTENANCE ASSESSMENTS**

18. For the express purpose of maintaining the common



areas, as identified herein, in the Subdivision shown on the Plat, and for the benefit of the lot owners, the Declarant has caused to be formed a property owners association known as the Marsh View Homeowners Association, Inc., ("Association") of which each lot owner in Marsh View Subdivision shall be a member. Common areas include the "20' X 20' Common Access Easement" between Lots 1 and 2, the "20' X 20' Common Access Easement" between Lots 3 and 4, and the "Common Access Easement", which is the access to Lots 5, 6, 7, 8 and 9 as shown on the above referenced Plat, the "10' X 10' Dumpster Easement", and the "4' X 10' Sign Easement". The Declarant reserves the right to assign its rights, including the right to enforce or amend these covenants, reserved easements, approval of the plans and location of improvements, and collection of assessments, pursuant to these covenants to said Association at such time as the Declarant, in its sole discretion, determines that such Association is prepared to assume the obligations imposed by these covenants.

19. Each and every owner of a lot except Lot 10 as shown on the aforesaid Plat of Marsh View Subdivision agrees to pay the Association on July 1 of each year beginning in the year 2004, for the maintenance of the "Common Access Easement" and the "20' X 20' Common Access Easements", the "10' X 10' Dumpster Easement" and the "4' X 10' Sign Easement", in Marsh View Subdivision as shown on the aforesaid plat, the sum of \$200.00 per lot and the sum of \$200.00 thereafter on every July 1 unless and until terminated or amended in accordance with paragraphs 28 or 29 of these covenants, together with other sums as may be required by these covenants. The owners of said lots shall pay said sums promptly when they become due, but, in any event, within thirty days after July 1 of each year. Upon failure of said lot owners to pay said sum when due, the amount shall become a lien upon the lot or lots owned by such lot owner, which lien, to include attorney's fees, costs and interest, may be claimed by notice and enforced in accordance with N.C.G.S. 57F-3-116. All assessments not paid within thirty (30) days of the due date shall bear interest from the due date at the rate of 10% per annum. Interest, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment.

20. The liens provided for herein shall be subordinate to the lien of any mortgage, mortgages, deed of trust or deeds of trust. Sale or transfer of any lot shall not affect the assessment, lien or liens provided for in the preceding paragraph. However, the sale or transfer of any lot which is subject to any mortgage or deed of trust pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien for such assessments as to the payment thereof which becomes due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, deed of trust or deeds of trust.

#### PART FIVE. MISCELLANEOUS

21. No sign of any kind shall be displayed on any lot except one sign advertising the property for sale or rent and a sign identifying the property by owner or pseudonym. Signs must be square or rectangular and shall have no side longer than 29



inches.

22. All service utilities, tanks, woodpiles and trash and garbage accumulation are to be enclosed within a fence or wall of a type and size approved by the Declarant so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or any other residence within the subdivision.

23. All sewage systems installed on any lot shall be in accordance with the rules and regulations of the local or State Departments of Health and shall be located upon said lands in locations supported by the Declarant and said Health Departments.

24. Each residential structure shall be serviced by a driveway not less than ten feet in width extending from the "20' X 20' Common Access Easement" for Lots 1 and 2 and Lots 3 and 4 and the "Common Access Easement" for Lots 5, 6, 7, 8 and 9 to a point not greater than four feet from the structure. Driveways shall be surfaced with concrete or asphalt. No piping shall be allowed on any Lot except for that minimum amount needed under driveways to provide access to the Lot.

25. Replacements or additions must comply with these covenants.

26. Because Lot 10 is not limited to residential use and occupancy, these covenants do not apply to said Lot; however, the general notes as shown on the recorded Plat and paragraph 27 herein shall apply to said Lot.

27. All areas designated on the Plat as United States Army Corps of Engineers Jurisdictional Wetlands or Wetlands, shall not be further subdivided for residential and/or commercial use. This restriction is applicable to Lots 1 through 10 as shown on the Plat.

28. The foregoing conditions, restrictions and easements shall be binding upon all purchasers of sites in said subdivision covered by these restrictions, and upon all persons claiming under them until January 1, 2030, at which time the said conditions, reservations, easements, and restrictions shall automatically be extended for further successive periods of ten (10) years each unless, by vote of the then owners of record of a majority of the lots shown on said Plat, it is agreed, on or before such expiration dates, to change the said conditions, reservations, easements, and reservations, in whole or in part.

29. For a period of ten (10) years after the date hereof the Declarant may amend these covenants by the registration of such amendments in the office of the Dare County Register of Deeds. Enforcement of these covenants may be by Declarant or any owner in the subdivision, either for equitable restraint against the violation thereof, or at the law for damages by virtue of such violation, and the invalidation of any one of the conditions and restriction shall in no wise affect any other of such provision, all of which shall remain in full force and effect.



IN WITNESS WHEREOF Declarant has caused this instrument to be executed the day and year first above written.

TRITON PROPERTIES, LLC

By: [Signature]  
Manager

STATE OF NORTH CAROLINA  
COUNTY/CITY OF DARE

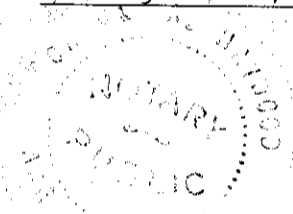
I, a Notary Public of the County and State aforesaid, certify that Robert L. Willis, Jr., manager of Triton Properties, LLC, a Virginia limited liability company, personally came before me this day and acknowledged the execution of the foregoing instrument on behalf of said limited liability company.

Witness my hand and official stamp or seal, this the 22<sup>nd</sup> day of June, 2004.

Carol A. Haywood  
Notary Public

My commission expires:

August 31, 2006



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North Carolina  
Dare County

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

Barbara M. Gray, Register of Deeds

By Vangola McClunam Assistant Register of Deeds