

NORTH CAROLINA  
DARE COUNTY

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR HATTERAS BY THE SEA

THIS DECLARATION is made on the date hereinafter set forth by Hatteras by the Sea Associates, a Limited Partnership, a North Carolina limited partnership, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Hatteras Township, County of Dare, State of North Carolina, which is more particularly described on Exhibit A attached hereto and incorporated herein by reference.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the Hatteras by the Sea Homeowners Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinabove described.

Section 4. "Common Area" shall mean all real property and improvements thereon owned by the Association for the common use and enjoyment of the Owners and consisting of undedicated streets and their appurtenant easements, roadway lighting and landscaping (including roadway lighting and landscaping located within the right-of-way of dedicated streets to the extent permitted by applicable laws), walls, signage, boardwalks, beach access easements, dumpster sites, recreational areas and creeks, as shown in part on a plat or plats of Hatteras by the Sea recorded in the Office of the Dare County Register of Deeds including, but

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not limited to, that area labeled on the recorded plat of Hatteras by the Sea as "Recreational Area" and "Club and Swimming Pool."

Section 5. "Lot" shall mean any separately numbered plot of land, regardless of size as shown on a recorded subdivision map of Hatteras by the Sea which has been approved by Declarant and shall include any Dwelling Unit constructed thereon.

Section 6. "Dwelling Unit" shall mean a residence containing sleeping facilities for one or more persons and a kitchen.

Section 7. "Member" shall mean and refer to every person or entity entitled to membership with voting rights in the Association as provided in this Declaration.

Section 8. "Declarant" shall mean and refer to Hatteras by the Sea Associates, a North Carolina limited partnership, as well as its successors and assigns, if such successors or assigns should acquire more than one Lot from the Declarant for the purpose of development.

Section 9. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 10. "ARC" or "Architectural Review Committee" shall mean those persons appointed by the Declarant or the Board of Directors of the Association in accordance with the provisions of Article VI of this Declaration.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to dedicate or transfer the use of all or any part of the Common Area by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument is signed by at least two-thirds (2/3) of the Members, agreeing to such dedication or transfer, has been recorded;

(b) the right of the Association to promulgate rules and regulations to maintain the Common Area specifically including the right to require every Owner to refrain from any use of his

Lot which would in anyway detract from the appearance or inhibit the use of any decorative wall or sign erected by the Declarant, including the placement of any vegetation or other matter or thing on top of, at a greater height than or overhanging such wall or sign such as to be visible from Light House Road West;

(c) the right of the Association to suspend the voting rights and right to use of any Common Area by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(d) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area; and

(e) the right of the Association to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his rights or enjoyment of the Common Area to the members of his family, his tenants, guests, or contract purchasers who reside on the property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to a lien for assessments shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be (i) the Declarant as to Lots retained by the Declarant upon the termination of the Class B membership, and (ii) all Owners other than the Declarant. Class A Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events,

whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) upon five (5) years after the date of this Declaration.

With the recording of new sections of Hatteras by the Sea and the annexation of additional lands subject to the jurisdiction of the Association, new Class A and Class B memberships shall be created, and any Class A memberships then held by the Declarant shall revert to Class B memberships to be held in common with the Class B memberships created by the annexation of a new section of Hatteras by the Sea.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot owned within the Properties, and each Owner, for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements or special assessments to be established by the Board of Directors of the Association, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall in addition to being a continuing lien upon the property also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Notwithstanding the foregoing, the Declarant shall, in its sole discretion, pay each year either the difference between the assessments collected by the Association from Owners other than the Declarant and the actual cost of operating and maintaining the Common Area subject to this Declaration or the per Lot assessment for the Lots held for sale by the Declarant.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents of the Properties and in particular for the improvement and maintenance of the Common Area and services devoted to this purpose, including but

not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, and maintenance of insurance in accordance with the By-Laws.

Section 3. Maximum Annual Assessment. Until December 31, 1988, the annual assessment shall be not more than Five Hundred Dollars (\$500.00) per Lot.

(a) The annual assessment for the calendar year 1989 and for each calendar year thereafter shall be established by the Board of Directors and may be increased by the Board of Directors for any calendar year without approval by the membership by an amount not to exceed ten percent (10%) of the annual assessment of the previous year or \$100, whichever is greater.

(b) The annual assessment for the calendar year 1989 and for each calendar year thereafter may be increased without limit by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessment for Repairs. In the event any portion of any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or family members, the Association is hereby authorized to repair such damaged area in a good and workmanlike manner. The amount necessary for such repairs, labor and material shall become a special assessment upon the Lot of said Owner.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement to the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership 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 one-half (1/2) of the required quorum

at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Rate of Annual Assessment. Annual assessments and special assessments for capital improvements must be fixed at a uniform rate and shall be collected on an annual, quarterly or monthly basis as the Board of Directors may determine subject to the right of the Declarant described in Section 1 of this Article. The books and records of the Association will be kept in such a manner that it is possible to determine and ascertain such sums as are expended by the Association for the purposes as set forth herein.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence, as to Owners other than the Declarant, on the first day of the month following conveyance of a Lot to any such Owner, and as to the Declarant as set forth in Section 1 of this Article IV. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten (10%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property and interest costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by abandonment of his Lot. Institution of a suit at law to attempt to collect payment of any delinquent assessment shall not be deemed to be an election by the Association that shall prevent it from thereafter seeking a foreclosure action and enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association.

Section 10. Subordination of the Lien to Mortgages. 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 section. 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 any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, deed of trust or deeds of trust.

#### ARTICLE V

##### USE RESTRICTIONS

Section 1. Permitted Structures. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family Dwelling Unit (thereby expressly excluding the construction of duplexes, double or multiple-unit Dwelling Units on any Lot) and an attached garage approved in accordance with the terms of Article VI of this Declaration. Any Dwelling Unit constructed on a Lot shall have not less than 1,800 square feet of heated and enclosed living area. The calculation of heated and enclosed living area shall not include garages, decks, porches and walkways.

Section 2. Location of Building on Lot. No building shall be erected on any Lot within twenty-five (25) feet of the front line of the Lot, ten (10) feet of the side line of the Lot or twenty (20) feet of the rear line of the Lot. When one Owner acquires all or a portion of 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 setback requirements referred to in this Section shall apply to the outside perimeter property line of the combined Lots acquired by a single Owner.

Section 3. Resubdivision of Lots. No Lot shall be subdivided or resubdivided to create an additional Lot or Lots. However, there may be added to or combined with any Lot as shown on the recorded plat of the Hatteras by the Sea all or a portion of another Lot or Lots to produce a larger building site upon the written consent of the Declarant.

Section 4. Completion of Building. All construction on a Lot shall be completed within eighteen (18) months from the commencement thereof, provided, however, that the Declarant may extend such time for completion of construction when, in its sole opinion, such an extension of time is warranted.

Section 5. Utilities and Cable Television. All utilities and cable television connections and lines serving individual Lots must be installed underground, at the expense of each Lot Owner, from the points of intersection with utility trunk lines

serving the Subdivision generally to the Dwelling Unit constructed on a Lot. All utility meters, to the extent permitted by the providers of utility services, must be installed on or underneath a Dwelling Unit. As long as cable television service is available, no exposed antenna shall be erected on or used on any Dwelling Unit or Lot. If cable television service is unavailable, an exposed antenna may be erected only with the approval of and subject to conditions imposed by the Architectural Review Committee. In no event shall any satellite dish be permitted on any Lot.

Section 6. Streets. No street shall be laid out or opened across or through any Lot except by the Declarant, which expressly reserves the right to do so.

Section 7. Fences. No fence of any kind will be permitted on the Properties other than a wall or fence erected by the Declarant in conjunction with its development of the Properties or a wall or fence erected by the Association on the Common Area.

Section 8. Signs. No billboards or signs shall be erected or allowed to remain on the Properties except "For Sale" signs, "For Rent" signs and signs giving the name of a Dwelling Unit and/or its Owner not exceeding six (6) square feet in total area. No such permitted sign shall be illuminated. Notwithstanding the foregoing, the Declarant may erect such signs on the Properties as it, in its sole discretion, deems necessary to the development, operation and marketing of the Properties or the normal conduct of its business, signs of general contractors and construction lenders may be erected during construction and must be removed prior to obtaining a certificate of occupancy for the Dwelling Unit constructed on a Lot, and the Association may erect such informational signs on the Common Area as it deems appropriate. The ARC may enter upon the Lot of any Owner and remove any sign violating this Section, and such entry by the ARC or its representative shall not be deemed a trespass. A sign so removed may be left on the Lot to be removed from the premises or destroyed by either the Lot or the sign Owner.

Section 9. Vehicle Storage. Upon construction of a Dwelling Unit, a Lot Owner shall provide sufficient parking space on his Lot and off the abutting street for at least two (2) vehicles. The storage of travel trailers, campers, trucks and self-propelled mobile homes shall be in a garage or under the Dwelling Unit. No one shall live in or occupy campers, travel trailers, trucks, self-propelled mobile homes and other vehicles while parked on a Lot.

Section 10. Driveways. Access within the Property shall only be permitted to and over the subdivision streets at points or locations approved by the ARC. During construction, an Owner shall provide access to his Lot for workers and for unloading



construction materials by means of at least a temporary clay driveway. The Lot Owner shall repair and bear the expense of repairing subdivision streets damaged by vehicles in connection with the construction on his Lot. The ARC may require a Lot Owner to install a culvert underneath the driveway serving his Lot at the point at which that driveway intersects a subdivision street, and the Lot Owner shall pay the cost of the culvert and its installation. At or prior to the completion of the construction of a Dwelling Unit on a Lot, the Owner thereof shall pave the driveway and all parking areas serving that Lot in concrete, asphalt or other paving materials approved by the ARC.

Section 11. Screening. Each Lot Owner shall provide screening from the public view, approved in writing by the ARC, for garbage stations, fuel tanks, rubbish storage receptacles or any other permanent facility that the ARC, in its sole opinion, shall require to preserve the beauty and harmony of the Properties. All rubbish shall be placed in receptacles specified by the Declarant but purchased by the Lot Owner and screened from public view except as required to accomplish the collection of rubbish from those receptacles.

Section 12. Pilings. All Dwelling Units constructed on the Properties on a foundation of or which are supported by pilings shall utilize pilings at least eight (8) inches in diameter (or having the strength and other structural characteristics of pilings of at least eight (8) inches in diameter), which shall be buried no less than eight (8) feet below the surface of the ground.

Section 13. Temporary Structures. No temporary structures, such as a trailer, mobile home, tent or shack, shall be constructed or placed upon any Lot before, during or after completion of construction of any buildings and structures except for such structures as are normally used by construction contractors during the period of construction. Such temporary structures shall be promptly removed after completion of construction and may not be used as residences while on the Lot.

Section 14. Water and Sewage. All wells, toilets and sewage units shall be installed and located in accordance with the rules and regulations of the North Carolina Department of Health or its successor regulatory agency and the Dare County Sanitarium. No outside toilets will be permitted under any circumstances except those self-contained temporary facilities used by construction workers during the period of construction of a Dwelling Unit on a Lot, and any such self-contained unit shall be removed after completion of construction or before occupation of the Dwelling Unit, whichever shall first occur.

Section 15. Animals. No pets other than household pets in reasonable numbers shall be kept in or on the Properties at any time. No savage or dangerous animal shall be kept. No pets may be raised or bred for sale or maintained for commercial purposes. Further, the Board of Directors of the Association may require the permanent removal of any pet causing or creating a nuisance or unreasonable disturbance or noise and such a decision of the Board of Directors of the Association shall be absolute and final. Moreover, the Board of Directors may promulgate such further rules and regulations concerning pets kept in or on the Properties as it deems just and proper. Any cleaning or repair of the Common Area as a result of damage or soiling by a pet shall be the responsibility of the Member who owns that pet, and, upon the failure of that Member to promptly clean or repair such damage, the Board of Directors is authorized to have such cleaning or repair performed and collect the cost thereof from that Member.

Section 16. Nuisances. It shall be the responsibility of each Lot Owner to maintain the exterior of his Dwelling Unit and the surrounding grounds of his Lot in a clean, tidy and safe manner, and such Lot Owner shall be responsible for preventing waste from occurring to any structure on his Lot. In the event of destruction of or other casualty to the building or structure, the premises shall be cleared and debris removed therefrom by the Owner of the Lot within ninety (90) days from the date of such casualty.

(a) No Lot shall be used in whole or in part for storage of anything that might cause such Lot to appear cluttered, unclean or obnoxious to the eye; nor shall any substance, thing or material be kept on any Lot that emits foul or obnoxious odors, noises or other conditions that will or may disturb the serenity, safety or comfort of the occupants of surrounding property. No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon to create a nuisance to the neighborhood.

(b) After construction has commenced on a Lot, the Lot Owner and his builder shall keep the Lot clean and neat in appearance. A trash and rubbish container at least eight (8) feet wide and eight (8) feet long shall be maintained during construction. All construction trash and debris shall be placed in the trash container and removed from the premises by the Owner or the builder. The burning of trash and rubbish is expressly prohibited. No structure, including the Dwelling Unit, shall be occupied until all construction trash, rubbish, debris and the trash container have been removed from the premises.

(c) No junked, wrecked or inoperative automobiles, trucks, buses or boats shall be permitted to remain on the Properties unless otherwise permitted by this Declaration, nor shall unsightly material be stored thereon. Owners of unoccupied Lots shall at all times keep and maintain their Lots in an orderly manner and prevent the accumulation of rubbish and debris upon the premises.

Section 17. Lot Maintenance. Each Lot Owner shall keep his Lot cleared of unsightly underbrush, weeds, debris and lumber. If said Lot Owner shall permit the same to exist on his Lot and fail to remove the same within thirty (30) days after being requested to do so by the Association, then the Association or its agents or employees shall have the right to enter upon the Lot for the purpose of cleaning, clearing or cutting the grass, underbrush or debris thereon, which, in the Association's sole opinion, detracts from the overall beauty or natural character of the neighborhood or adversely affects the safety or health of the residents, and such entry shall not be deemed a trespass. The expenses of entry and removal shall be the personal debt of the Lot Owner and shall also constitute a lien upon the land until paid. The provisions of this Section shall not be construed as an obligation on the part of either the Declarant or the Association to provide such services. The Association and its agents and employees are granted a right and easement of ingress and egress over the Lots subject to these covenants for the purposes of this Section.

## ARTICLE VI

### LANDSCAPING AND ARCHITECTURAL CONTROL

Section 1. Architectural Review Committee. An Architectural Review Committee ("ARC") consisting of three (3) persons shall be appointed by the Declarant. At such time as the Class B membership for all sections of the Properties expires, the ARC shall be appointed by the Board of Directors of the Association.

Section 2. Plan or Design Approval. No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, Dwelling Units, out-buildings, fences, walls, signs, antennas, clotheslines, mailboxes, post lamps and other structures, or excavation, changes in grade or clearing of natural vegetation shall be undertaken upon any Lot unless the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the proposed improvements shall have been submitted to the ARC and expressly approved in writing. In assessing the suitability of plans submitted to it for the construction of

Dwelling Units, the ARC shall consider whether those plans are consistent with the design of the model home constructed by the Declarant on Lot 36 of the Properties. No subsequent alteration or modification of any existing improvements or construction, erection or installation of additional improvements may be undertaken or allowed to remain without the review and express written approval of the ARC. The ARC may charge a reasonable fee for its review of plans and specifications, which initially shall be set at \$100.

Section 3. Effect of Failure to Approve or Disapprove. In the event that the ARC fails to approve or disapprove any of the foregoing within thirty (30) days after plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully satisfied; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the ARC if they contain erroneous data or fail to present full and adequate information upon which the ARC can arrive at a decision. Plans and specifications submitted to the ARC shall include, but shall not be limited to, three (3) sets of a site plan, a foundation plan, foundation survey by a North Carolina registered surveyor, a floor plan or plans, the four (4) directional elevations, a schedule of proposed exterior colors and materials, and any other schedules required by the ARC in order for it to determine if its adopted standards will be satisfied. The ARC may approve, conditionally approve or disapprove the building site location and the plans or specifications for the construction of any improvements upon any grounds, including purely aesthetic considerations, which in its sole discretion shall appear warranted to protect the beauty and harmony of the subdivision. Neither the ARC, the Declarant nor the Association shall be responsible for any structural defects in the plans or specifications of any building or structure erected according to such plans and specifications, and the ARC, the Declarant and the Association shall have the right, but no affirmative duty, to inspect any construction for the purpose of ascertaining its compliance with the approved plans and specifications.

Section 4. Right of Inspection. The ARC shall have the right, at its election, to enter upon any of the Lots on the Properties during preparation, construction, erection or installation of any improvements to determine that such work is being performed in conformity with the approved plans and specifications.

Section 5. Exterior Maintenance. The exterior maintenance of Dwelling Units located on Lots and other improvements constructed thereon shall be the duty and responsibility of the Owner of such Lot and shall not be the responsibility of the Association.

Section 6. Original Improvements by Declarant. Nothing herein contained shall in any way prevent or interfere with the right of the Declarant to construct the original improvements desired by Declarant on any Lot.

## ARTICLE VII

## EASEMENTS

Section 1. Utilities and Drainage. Easements for installation and maintenance of utilities, sanitary sewer, water and drainage facilities are ten (10) feet in width and reserved along the front line of each Lot, as described on the recorded plat of Hatteras by the Sea. Within these easements no structure, planting or other materials shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities or sanitary sewer or water lines, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

Section 2. Walks, Drives, Utilities, Etc. The Common Area shall be subject to such easements for walkways, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna and cable lines and other utilities, ingress, egress and regress and otherwise as shall be established by the Declarant, and the Association shall have the power and authority to grant and establish further easements upon, over, under and across the Common Area.

Section 3. Encroachments; Declarant's Easement to Correct Drainage. All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps, walls and foundations. If any encroachment shall occur subsequent to subjecting the Properties to this Declaration as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be and remain a valid easement for such encroachment for the maintenance of the same. For a period of twenty-five (25) years from the date hereof, the Declarant reserves an easement and right on, over and under any property comprising the Properties to maintain and to correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary. After such action has been completed, the Declarant shall restore the

affected property to its original condition to the extent practicable. Declarant shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Declarant. Nothing contained in this Section shall obligate the Declarant to correct drainage or surface water runoff.

Section 4. Easement to Public Utilities. An easement is hereby established for municipal, state or public utilities serving the Properties, their agents and employees over all Common Area hereby or hereafter established for setting, removing and reading utility meters, maintaining and replacing utility or drainage connections, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.

Section 5. Beach Access. Beach access easements eight feet in width have been reserved as shown on the recorded plat of Hatteras by the Sea along the common boundaries between Lots 3 and 4 and Lots 12 and 13. These access easements are reserved for the common use and enjoyment of the Owners of lots in Hatteras by the Sea and shall be maintained by the Association. No right of use or enjoyment in these access easements is extended to the public generally. Private beach access easements four feet in width have been reserved as shown on the plat of Hatteras by the Sea along the common boundaries between Lots 6 and 7, Lots 8 and 9 and Lots 10 and 11. These access easements have been reserved for the private use and enjoyment of the Owners of Lot 24 as to the access easement running along the common boundary between Lots 10 and 11, the Owners of Lot 25 as to the access easement running along the common boundary between Lots 8 and 9, and the Owners of Lot 26 as to the access easement running along the common boundary between Lots 6 and 7. No right of use and enjoyment in these private beach access easements is granted to the Owners of Lots in Hatteras by the Sea other than those specified in the foregoing sentence or to members of the public generally. These private beach access easements shall be maintained by the Owners of Lots served thereby, and the Association shall have no obligation to maintain such easements.

Section 6. Sign and Planting Easements. A planting easement has been reserved on Lots 2 and 3 as shown on the plat of Hatteras by the Sea and labelled thereon as "Proposed Planting Easement." That easement is more fully described as follows:

BEGINNING at a point marking the northwest corner of Lot 2 and the northeast corner of Lot 3 of Hatteras by the Sea as per plat thereof recorded in Plat Cabinet C, Slide 60 <sup>B&C</sup>, in the Dare County Registry; thence from said beginning point and with the southern margin of the 50-foot right-of-way of Light

House Road West along a curve to the right having a chord bearing and distance of North 72° 48' 41" East 33.27 feet, an arc distance of 33.31 feet and a radius of 205 feet to a point; thence South 12° 32' 03" East 60.00 feet to a point; thence South 71° 18' 59" West 21.53 feet to a point in the common boundary between Lots 2 and 3 of Hatteras by the Sea; thence South 71° 18' 59" West 72.57 feet to a point; thence North 34° 25' 20" West 55.00 feet to a point; thence North 00° 00' 00" West 8.38 feet to a point in the southern margin of the 50-foot right-of-way of Light House Road West; thence with the southern margin of the 50-foot right-of-way of Light House Road West along a curve to the left having a chord bearing and distance of North 72° 29' 52" East 67.38 feet, an arc distance of 67.58 feet and a radius of 250 feet to a point; thence continuing along the southern margin of the 50-foot right-of-way of Light House Road West along a curve to the right having a chord bearing and distance of North 66° 27' 18" East 12.18 feet, an arc distance of 12.18 feet and a radius of 205.00 feet to the point and place of BEGINNING.

A planting and sign easement has been reserved on Lot 36 as shown on the plat of Hatteras by the Sea and labelled thereon as "Proposed Planting and Sign Easement." That easement is more fully described as follows:

BEGINNING in the northern margin of the 50-foot right-of-way of Light House Road West at the southeastern corner of Lot 36 of Hatteras by the Sea as per plat thereof recorded in Plat Cabinet C, Slide 60<sup>B&C</sup>, in the Dare County Registry; thence from said beginning point North 42° 41' 36" West 70.00 feet to a point; thence South 83° 45' 12" West 62.28 feet to a point; thence South 37° 31' 27" West 35.93 feet to a point; thence South 83° 45' 12" West 66.00 feet to a point; thence South 05° 13' 23" East 55.00 feet to a point in the northern margin of the 50-foot right-of-way of Light House Road West; thence along the northern margin of the 50-foot right-of-way of Light House Road West along a curve to the left having a chord bearing and distance of North 73° 08' 14" East 58.32 feet, an arc distance of 58.53 feet and a radius of 200.00 feet to a point; thence continuing along the

northern margin of the 50-foot right-of-way of Light House Road West along a curve to the right having a chord bearing and distance of North 74° 15' 12" East 84.17 feet, an arc distance of 84.56 feet and a radius of 255.00 feet to a point; thence continuing along the northern margin of the 50-foot right-of-way of Light House Road West North 83° 45' 59" East 55.36 feet to the point and place of BEGINNING.

Within these easements there is reserved the right to plant, build and maintain grasses, wildflowers, shrubbery, ponds, footbridges, gazebos and signs as the Declarant and/or the Association may see fit. It shall be the responsibility of the Association to maintain all structures, signs and plantings placed within such easements by the Declarant or the Association.

#### ARTICLE VIII

##### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, including the Declarant, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or by any Owner, including the Declarant, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Rights of Lenders and Insurers of First Mortgages. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences.

So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have upon written request therefor the following rights:

- (a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified



public accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by April 15 of each calendar year.

- (b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or By-Laws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association.
- (c) To receive notice of any condemnation of the Common Area or any portion thereof.
- (d) To receive notice of any substantial damage to the Common Area.
- (e) To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Area, other than those specific rights vested in the Association under Article II hereof.

Section 4. Term and Amendment. The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements as herein provided, or affect any lien for the payment thereof established herein, and provided further that the Board of Directors of the Association may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction or amendment required by VA, HUD or the Federal National Mortgage Association, without action or consent of the Owners. Any amendment must be properly recorded in the Dare County Registry.

Section 5. Amendment to Achieve Tax-Exempt Status. The Declarant, for so long as it shall retain control of the Board of Directors of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, without the consent of any Owner, in order to qualify the Association for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the

Dare County Registry.

Section 6. Certification and Recordation of Amendment. Any instrument amending this Declaration shall be delivered, following approval by the Owners (to the extent that Owner's approval is required by the provisions of this Declaration), to the Board of Directors. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

- (a) Reasonably assure itself that the amendment has been duly approved by the Owners as provided in Section 4 of this Article.
- (b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association.
- (c) Within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Dare County Registry.

Section 7. Effect and Validity of Amendments. All amendments shall be effective from the date of proper recordation in the Dare County Registry. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors and recorded as provided in this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment.

Section 8. Annexation. Additional property may be annexed to the Properties and made subject to this or another Declaration and the jurisdiction of the Association in accordance with the following procedures:

- (a) Except as otherwise provided in subparagraph (b) of this Section 8, annexation of additional property shall require the consent of two-thirds (2/3) of the Class A Members and two-thirds (2/3) of the Class B Members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. The presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at each subsequent meeting shall be one-half (1/2) of the required quorum

of the preceding meeting <sup>and such</sup> subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

(b) If within seven (7) years of the date of incorporation of this Association the Declarant shall develop additional lands within the area described in the metes and bounds description attached hereto as Exhibit B and incorporated by reference, such additional lands may be annexed to said Properties without the assent of the Class A members. The Declarant shall have the authority to determine the number of acres to be annexed, the restrictions to be placed thereon, the size and number of Lots or Units, types and sizes of dwellings erected thereon and other matters incident to the development of such additional land.

Section 9. Exchange of Common Area. Notwithstanding any provision herein to the contrary, it is expressly provided that the Association may exchange with the Declarant, as well as any other Owner, for fair value any portion of the Common Area theretofore conveyed to the Association for additional property to be added to the Common Area. Upon such exchange and conveyance, the area conveyed shall cease to be Common Area and shall cease to be subject to the provisions of this Declaration relating to the Common Area. Any area acquired by the Association pursuant to the foregoing language shall become Common Area and shall be subject to the provisions of these covenants relating to the Common Area.

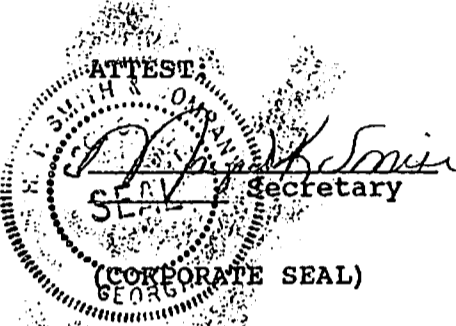
Section 10. Conflicts. In the event of any irreconcilable conflict between this Declaration and the By-Laws of the Association, the provisions of this Declaration shall control. In the event of an irreconcilable conflict between this Declaration or the By-Laws of the Association and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument under seal as of the 21<sup>st</sup> day of October, 1988.

HATTERAS BY THE SEA ASSOCIATES,  
A LIMITED PARTNERSHIP,  
a North Carolina limited  
partnership (SEAL)

By: H. T. SMITH & COMPANY, its  
Managing General Partner

By: Jenell Smith Jr.  
President



~~GEORGIA~~ North Carolina  
Guilford COUNTY

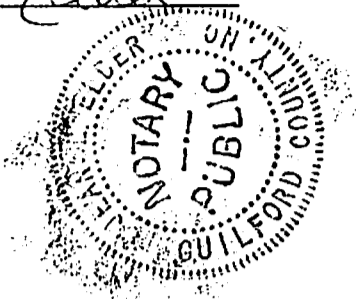
I, Jean L. Elder, a Notary Public for the County and State aforesaid, do hereby certify that Margaret K. Smith personally came before me this day and acknowledged that he/she is Secretary of H. T. Smith & Company, a Georgia corporation, and that by authority duly given and as the act of the corporation acting as Managing General Partner of Hatteras by the Sea Associates, a Limited Partnership, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him/her as its Secretary.

Witness my hand and notarial stamp or seal, this the 21<sup>st</sup>  
day of October, 1988.

Jean L. Elder  
Notary Public

My Commission Expires:

May 24, 1992



NORTH CAROLINA DARE COUNTY

The foregoing certificate(s) of Jean L. Elder a Notary  
Public of Guilford Co., NC

is/are 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.  
Dorris A. Fry Register of Deeds for Dare County

By Norma Jean Wade Assistant Register of Deeds

EXHIBIT A

That certain tract or parcel of land lying and being in Hatteras Township, Dare County, North Carolina, and more particularly described as follows:

BEGINNING at a concrete monument in the southeast corner of the Sea Breeze Subdivision, as per plat thereof recorded in Plat Cabinet A, Slide 230, Dare County Registry, and thence from said beginning point with the east line of the Sea Breeze Subdivision North  $33^{\circ} 49' 45''$  West 361.63 feet to a concrete monument in the east line of the Sea Breeze Subdivision at the southwest corner of the property now or formerly owned by Davis, Ross and Molloy; thence with the south line of the property now or formerly owned by Davis, Ross and Molloy North  $67^{\circ} 03' 52''$  East 660.00 feet to a concrete monument at the southeast corner of the property now or formerly owned by Davis, Ross and Molloy; thence with the east line of the property now or formerly owned by Davis, Ross and Molloy North  $37^{\circ} 55' 11''$  West 615.47 feet to a point in a creek at the northeast corner of the property now or formerly owned by Davis, Ross and Molloy; thence North  $78^{\circ} 36' 52''$  East 158.71 feet to another point in the creek; thence North  $50^{\circ} 13' 52''$  East 273.56 feet to another point in the creek; thence North  $68^{\circ} 15' 09''$  East 403.76 feet to another point in the creek; thence North  $73^{\circ} 19' 24''$  East 24.83 feet to another point in the creek; thence with the west line of the property now or formerly owned by Georgia G. Rhodes and passing through a concrete monument and two iron pipes South  $42^{\circ} 41' 36''$  East 740.23 feet to a concrete monument in the west line of the property now or formerly owned by Georgia G. Rhodes; thence continuing with the west line of the property now or formerly owned by Georgia G. Rhodes South  $27^{\circ} 20' 50''$  East 53.58 feet to a concrete monument in the west line of the property now or formerly owned by Georgia G. Rhodes; thence continuing with the west line of the property now or formerly owned by Georgia G. Rhodes South  $42^{\circ} 41' 36''$  East 228.18 feet to a concrete monument in the north line of the Cape Hatteras National

Seashore and the southwest corner of the property now or formerly owned by Georgia G. Rhodes; thence with the north line of the Cape Hatteras National Seashore South 66° 18' 20" West 1,609.85 feet to the point and place of BEGINNING, being the property shown on the Map of Hatteras by the Sea prepared by W. M. Meekins, Jr. & Associates, Inc. and recorded in Plat Cabinet C, Slide 60 B & C, Dare County Registry.

TOGETHER WITH an easement for ingress, egress and regress and the installation and maintenance of utilities 50 feet in width beginning at a concrete monument, said concrete monument being located North 42° 41' 36" West 163.59 feet from a concrete monument in the north line of the Cape Hatteras National Seashore at the southwest corner of Lot 12 of Hatteras Colony South, as per plat thereof recorded in Map Book 7, Page 47, Dare County Registry; thence from said beginning point North 42° 41' 36" West 53.42 feet to a concrete monument; thence along a curve to the right having a chord bearing and distance of South 76° 45' 05" West 69.52 feet and a radius of 285.00 feet to an iron pipe; thence South 83° 45' 12" West 171.56 feet to a concrete monument; thence South 27° 19' 59" East 53.57 feet to a concrete monument; thence North 83° 45' 12" West 152.29 feet to an iron pipe; thence along a curve to the left having a chord bearing and distance of South 75° 00' 24" West 101.92 feet and a radius of 335.00 feet to the point and place of BEGINNING, as per plat thereof prepared by W. M. Meekins, Jr. & Associates, Inc. dated January 20, 1988.

AND WITH the non-exclusive easement for ingress, egress and regress, as conveyed under that Deed of Easement dated July 1, 1988 by and among Georgia G. Rhodes and husband, Joseph W. Rhodes, Russell E. Twiford and wife, Rosabelle Twiford, O. C. Abbott and wife, Judith J. Abbott, and Christopher L. Seawell and wife, Kathleen B. Seawell, as Grantors, and Bessemer Trust Company, N.A., as Agent under that Nominee Agreement dated December 31, 1985 and recorded in Book 467, Page 264, in the Dare County Registry, as Grantee, over and across all present and future roadways over that property being more particularly described as follows:

BK 602 PG 0069

Hatteras Colony South Subdivision, as per  
plat thereof recorded in Plat Book 7, Page  
47, Dare County Registry.



EXHIBIT B

That certain tract or parcel of land lying and being in Hatteras Township, Dare County, North Carolina, and more particularly described as follows:

BEGINNING at a concrete monument in the southeast corner of the Sea Breeze Subdivision, as per plat thereof recorded in Plat Cabinet A, Slide 230, Dare County Registry; thence from said beginning point with the east line of the Sea Breeze Subdivision North 33° 49' 45" West 361.63 feet to an existing concrete monument; thence with the east line of the Sea Breeze Subdivision North 25° 16' 19" West 500.00 feet to an iron pipe; thence continuing with the east line of the Sea Breeze Subdivision North 25° 16' 19" West 83.20 feet to an existing concrete monument at the northeast corner of the Sea Breeze Subdivision; thence with the north line of the Sea Breeze Subdivision South 73° 22' 11" West 257.65 feet to an existing concrete monument at the northwest corner of the Sea Breeze Subdivision and the northeast corner of the Nita B. Ballance Subdivision; thence with the north line of the Nita B. Ballance Subdivision South 73° 12' 14" West 200.16 feet to an existing concrete monument at the northwest corner of the Nita B. Ballance Subdivision, the northeast corner of the Paquiac Pines and Jones Subdivisions and the southeast corner of the property now or formerly owned by William Z. Burrus; thence with the east line of the property now or formerly owned by William Z. Burrus and the property now or formerly owned by the Assembly of God Church North 18° 02' 00" West 452.85 feet to an iron pipe in a pond at the southeast corner of the property now or formerly owned by G. Ricks and the southwest corner of the property now or formerly owned by S. E. Harrison; thence with the south line of the property now or formerly owned by S. E. Harrison North 76° 58' 23" East 239.99 feet to an existing iron pipe at the southeast corner of the property now or formerly owned by S. E. Harrison and the southwest corner of the property now or formerly owned by Theo Midgett; thence with

the south line of the property now or formerly owned by Theo Midgett North  $82^{\circ} 50' 28''$  East 156.77 feet to an iron pipe in the west line of the property now or formerly owned by Robert Austin; thence with the west line of the property now or formerly owned by Robert Austin South  $25^{\circ} 15' 23''$  East 25.48 feet to an existing concrete monument at the southwest corner of the property now or formerly owned by Robert Austin; thence with the south line of the property now or formerly owned by Robert Austin North  $84^{\circ} 08' 53''$  East 210.00 feet to an existing concrete monument at the southeast corner of the property now or formerly owned by Robert Austin; thence with the east line of the property now or formerly owned by Robert Austin North  $25^{\circ} 10' 41''$  West 209.98 feet to an existing concrete monument at the northeast corner of the property now or formerly owned by Robert Austin and in the southern margin of the 60-foot right-of-way of State Road 1241; thence with the southern margin of State Road 1241 to an iron pipe marking the northwest corner of the property now or formerly owned by Ruth Austin; thence with the west line of the property now or formerly owned by Ruth Austin South  $46^{\circ} 27' 03''$  East 179.98 feet to an iron pipe at the southwest corner of the property now or formerly owned by Ruth Austin; thence along the south line of the property now or formerly owned by Ruth Austin North  $70^{\circ} 06' 39''$  East 239.96 feet to an iron pipe in the west line of the property now or formerly owned by Georgia G. Rhodes; thence with the west line of the property now or formerly owned by Georgia G. Rhodes North  $46^{\circ} 07' 03''$  West 235.57 feet to an iron pipe in the southern margin of State Road 1241; thence along the southern margin of State Road 1241 North  $49^{\circ} 32'$  East 181.69 feet to an iron pipe in the southern margin of State Road 1241; thence continuing with the southern margin of State Road 1241 North  $48^{\circ} 26'$  East 160.51 feet to an iron pipe in the southern margin of State Road 1241; thence continuing with the southern margin of State Road 1241 North  $49^{\circ} 06'$  East 100.42 feet to an iron pipe in the southern margin of State Road 1241 and the east line of the property now or formerly owned by R. Burrus, Jr.; thence with the west line of the property now or formerly owned by R. Burrus, Jr. South  $46^{\circ} 11'$  East

461.8 feet to an iron pipe at the southeast corner of the property now or formerly owned by R. Burrus, Jr.; thence with the east line of the property now or formerly owned by R. Burrus, Jr. North 27° 45' East 459 feet to an iron pipe in the southern margin of State Road 1241; thence along the southern margin of State Road 1241 to an iron pipe in the center of a canal at the northwest corner of the Hatteras Colony South Subdivision as per plat thereof recorded in Map Book 7, Page 47, Dare County Registry; thence with the west line of the Hatteras Colony South Subdivision South 12° 42' East 174.02 feet to an iron pipe; thence continuing with the west line of Hatteras Colony South Subdivision South 31° 54' West 166.32 feet to an iron pipe; thence continuing with the west line of Hatteras Colony South Subdivision South 44° 38' East 166.56 feet to an iron pipe; thence continuing with the west line of Hatteras Colony South Subdivision South 8° 30' East 92.64 feet to an iron pipe; thence continuing with the line of Hatteras Colony South Subdivision South 22° 45' West 149.59 feet to an iron pipe; thence continuing with the west line of Hatteras Colony South Subdivision South 42° 41' 36" East 996.42 feet to a concrete monument at the southeast corner of Hatteras Colony South Subdivision in the north line of the Cape Hatteras National Seashore; thence with the north line of Cape Hatteras National Seashore South 66° 18' 32" West 225.00 feet to a concrete monument; thence continuing with the north line of Cape Hatteras National Seashore South 66° 18' 20" West 1,609.85 feet to the point and place of BEGINNING.