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***DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS***  
for

***OCEANVIEW HATTERAS ESTATES***

*(formerly Lots 3 through 9, Hatteras Estates, Section 1, Map Book 3, Page 52, Dare Registry)*

On Hatteras Island in Dare County, North Carolina

This Declaration of Covenants, Conditions and Restrictions (hereinafter "Declaration") is made and entered into on the 25th day of March, 2003, by Midgett Realty, Inc., a North Carolina corporation (hereinafter "Declarant").

Witnesseth:

WHEREAS Declarant is now or has been the owner of the real property described in Exhibit A which is attached hereto and incorporated herein by reference, and

WHEREAS the Declarant desires to create on the lands described in Exhibit A a community of residential uses (the "Community") together with streets, drives, lanes, footways, open spaces, landscaping, entrances, drainage facilities, access easements, and any common facilities for the benefit of the Community shown on any recorded plats of the Community or any part thereof (hereinafter "Facilities"); and

WHEREAS the Declarant desires to provide for the preservation of the values and amenities in the Community and for the maintenance of the Facilities and, to accomplish that desires to subject the real property described in Exhibit A to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, all for the benefit of said real property and each owner of a portion thereof; and

WHEREAS the Declarant's intention is to develop the Community with residential homesites for the construction of homes of similar styles, designs and construction which will be limited to single-family structures, and



WHEREAS the Declarant has deemed it necessary for the efficient preservation of the values and amenities in the Community, to create an agency to which should be delegated and assigned the powers of maintaining, administering, operating and replacing the community properties and Facilities, as appropriate, and administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS the Consenters have heretofore purchased or otherwise acquired land or have interests in lands lying within the original outer boundaries of the Properties or have a lien or other interest which requires consent to this Declaration; and

WHEREAS Declarant has caused a non-profit corporation, Oceanview Hatteras Estates Homeowners Association, Inc., to be incorporated under the laws of North Carolina for the purpose of exercising the functions set out hereinabove;

NOW THEREFORE the Declarant declares that the real property described in Exhibit A is and shall hereafter be held transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of this Declaration of Covenants, Conditions and Restrictions and any amendments thereto.

#### ARTICLE ONE. DEFINITIONS

The following words when used in this Declaration or any amended or Supplemental Declaration (unless the context requires otherwise) shall have the following meanings:

"Assessment(s)" or "assessment(s)" or "Common Charges" shall mean and refer to the assessment(s) and charges levied by the Association against Members who are the Owners of homesites in the Properties and the words Assessment(s) or assessment(s) shall have the same meaning as Common Charges, unless the context requires otherwise.

"Association" shall mean and refer to the Oceanview Hatteras Estates Homeowners Association, Inc., and "Bylaws" shall mean and refer to the Bylaws of the Association and all amendments thereto.

"Board" shall mean and refer to the Board of Directors of the Association.

"Common Expenses" shall mean and refer to:

- (a) expenses of administration, operation, maintenance, repair or replacement of the Common Properties;
- (b) expenses declared Common Expenses by the provisions of this Declaration or the Bylaws;
- (c) expenses agreed upon from time to time as Common Expenses by the Association Board of Directors and lawfully assessed against Members who are Owners of residential Homesites or Dwelling Units in The Properties as applicable, in accordance with the Bylaws or this Declaration; and



(d) any valid charge against the Association or against the Common Properties as a whole.

"Consenters" shall mean (a) the following beneficiaries under a deed of trust securing the Properties and recorded in Book 1476, Page 204, Dare County Registry: T. Stockton Midgett and wife, Elizabeth Midgett, Anderson Midgett and The Paley-Midgett Company, LLC, a N.C. limited liability company, and (b) the Board of Directors of Hatteras Estates Property Owners' Association, Inc. Each Consenter has executed a consent to the terms and conditions in this Declaration and is attached hereto as Exhibits "B" and "D".

"Common Properties" shall mean and refer to those areas of land shown on any recorded plat of the Properties and labeled as "Common Properties" or shown as open space, ocean access easement, streets, roads or pedestrian walking areas (together with all improvements located thereon) which are a part of the Properties, and as such are intended to be devoted to the common use and enjoyment of the Members, subject to special use rights and limitations, if any, granted to or imposed on Owners of particular homesites, and subject to the use rights of guests and others to whom the Developer or Board of Directors grants a legal right to the use of the street and ocean access easement.

"Declarant" shall mean and refer to Midgett Realty, Inc., a North Carolina corporation, and any person or entity who is specifically assigned the rights and interests of Declarant hereunder.

"Dwelling Unit" shall mean any residential structure together with any approved appurtenances located on any homesite.

"Front Yard" shall mean that portion of a homesite facing the Highway 12 not that portion facing the Private Drive.

"Oceanview Hatteras Estates" shall mean and refer to that community within Hatteras Village in Dare County, North Carolina, consisting of the lands described in Exhibit A and those defined in "Common Properties".

"Homesite" shall mean and refer to any unimproved parcel of land within The Properties which is intended for use as a site for a single family detached dwelling as shown upon any recorded subdivision map of any part of the Properties, with the exception of Common Properties or Limited Common Properties. A parcel of land shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved property, i.e., a Dwelling Unit.

"Living Area" shall mean and refer to those heated and/or air-conditioned areas within a Dwelling Unit that shall not include garages, carports, porches, patios, breezeways, terraces, or basements.

"Member" shall mean a member of the Association and shall refer to all homesite Owners in the Properties.

"Ocean access easement" shall mean and refer to that pedestrian accessway area lying East of and



across Highway 12 from the Community which provides access for members and other owners of adjoining Hatteras Estates Subdivision to the lands of the United States of America comprising a portion of the Cape Hatteras National Seashore. If Hatteras Estates Association improves or maintains said easement and expends sums therefor, then the Community's Association shall pay its prorata share of the costs and then, in turn, assess as necessary the homesites and/or dwelling units in the Community.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any homesite or Dwelling Unit situated upon the Properties, but notwithstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any secured noteholder or trust beneficiary unless and until such secured noteholder or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. (Note: the words "Member" and "Owner" are meant to describe all Oceanview Hatteras Estates owners interchangeably as semantics dictate throughout this Declaration.)

"Plat" shall mean that map or plat entitled, "Midgett Realty, Inc., Lots 1-9, Oceanview Hatteras Estates, (formerly Lots 3-9, Section 1, Hatteras Estates), As Rec.: M.B. 3, Pg. 52 / D.B. 1476, Pg. 203, Hatteras Village, Hatteras Twsp., Dare County, North Carolina," dated March 3, 2003, prepared by Martin Barnette, PLS, and recorded in Plat Cabinet F, Slide 7, Dare County Registry.

"Properties" shall mean and refer to all the Existing Property as described in Exhibit A, all the lands (including but not limited to common properties, streets, roads and amenities) described in the deed of conveyance from Declarant into Oceanview Hatteras Estates Homeowners Association, Inc. recorded after registration of this Declaration.

## ARTICLE TWO. GENERAL PROVISIONS

Section 1. Duration The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of, and be enforceable by, the Association or any Owner, its and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by two-thirds (2/3) of the Members of the Association has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless written notice of the proposed agreement is mailed to every Member at least fifty (50) days in advance of any action taken. The covenants may be terminated by an instrument signed by eight of the nine lot Owners.

Section 2. Notices. Any notice required to be sent to any Member or Owner, under the provisions of this Declaration, shall be deemed to have been properly sent when mailed, postage prepaid, first-class mail, or deposited with a courier (such as, but not limited to, Federal Express) and addressed to the person at the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Notice to any one of the Owners, if title is held by more than one, shall constitute notice to all Owners.



Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by an appropriate civil proceeding brought by Oceanview Hatteras Estates Homeowners Association, Inc. against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or both, and against the land to enforce any lien created by these covenants and restrictions; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants and restrictions by judgment or court order shall in no way affect any other provision that shall remain in full force and effect.

ARTICLE THREE. Aesthetics Review

Section 1. Purposes. The Declarant desires to provide for the preservation of the values in the Properties with respect to any Dwelling Unit to be constructed on any homesite, and to that end will establish under the Association an Aesthetics Review Committee in order to provide, enforce and maintain certain standards as to harmony of exterior design and location of the improvements on any homesite in relation to surrounding structures, natural features and topography.

Section 2. Aesthetics Review Committee Generally. Unless expressly authorized in writing by the Aesthetics Review Committee (the "Committee"), no Dwelling Unit, fence, wall, driveway, patio, building or other structure or improvement whatsoever may be constructed, nor may any exterior addition or alteration to any Dwelling Unit, fence, wall, driveway, patio, building, retaining wall, pier or other structure or improvement be started, nor may any clearing or site work be commenced or maintained upon any homesite, until plans and specifications therefor showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, driveway, parking, decorative landscape planting, floor plans and elevations therefor (all of which is hereinafter referred to collectively as the "Plans"), shall have been submitted in triplicate to, and approved in writing, as to harmony of external design and location in relation to any surrounding structures, natural features and topography, by the Committee. The Committee shall have the absolute and exclusive right to refuse to approve any such Plans which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons, which in the sole and uncontrolled discretion of the Committee shall be deemed sufficient; provided that the Committee shall not refuse to approve any Plans which are substantially similar to any other plans and specifications which previously have been approved for any Dwelling Unit. The Committee in the exercise of its discretion shall not approve the location of a Dwelling Unit on any homesite within 45 feet of the rear line of such homesite, within 8 feet of the side lines of such homesite and within 100 feet of the front line of such homesite. Notwithstanding any of the foregoing provisions, in the application of setbacks the Committee shall have complete authority to determine the appropriate building site and location for the Dwelling Unit on each and every Homesite.

No lots 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 (not including home occupations that do not require or necessitate regular deliveries, pick ups or customer/client visits), 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.



Anything herein to the contrary notwithstanding, the Committee, when concurred in by the Board, or Declarant unilaterally, may vary the building setback lines recited herein, so long as such variance does not cause the revised setback requirement to be less than that set by Dare County at that time. Any such variance shall be evidenced by a certificate of variance or compliance signed by two (2) of the officers of the granting entity, in recordable form and filed in the Office of the Register of Deeds of Dare County.

Section 3. Aesthetics Review Committee.

(a) Membership. The Committee shall be composed of two (2) persons (who need not be Members of the Association) appointed by the Board who shall serve until death, resignation, or removal by the Board. The Board shall have full authority to designate a successor.

The Committee may designate a representative to act for it. Unless otherwise approved by the Association, neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Association shall keep, or cause to be kept, a list of the names and addresses of the persons who form the Committee and a list of the names and addresses of any designated representatives of the Committee and such a list shall be available to any Owner.

(b) Procedure. Prior to the commencement of any construction the Plans shall be submitted to the Committee. In addition, at that time the Owner shall also provide to the Committee a completed Residential Building Application Form.

Approval shall be subject to such architectural guidelines as may from time to time be promulgated by the Committee. (A copy of the initial Aesthetics Guidelines are attached to this Declaration as Exhibit C.) Within thirty (30) days after receipt of the Plans and all other required information, the Committee shall notify the Owner of the Homesite or Dwelling Unit in writing as to whether the Plans have been approved. Unless the Committee responds within thirty (30) days after all required information has been received, the Plans shall be deemed approved. The response of the Association may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the thirty (30) days time period for further Committee response shall only commence upon receipt of the requested additional information. If approval with conditions is granted, and construction then begins, the conditions shall be deemed accepted by the Owner of the Homesite or Dwelling Unit and the conditions imposed shall become fully a part of the approved Plans.

Prior to any ground disturbing activities commencing on any Homesite for construction of an approved Dwelling Unit thereon, the Committee, on behalf of the Association will collect from the Owner a One Thousand Dollar (\$1,000.00) Infrastructure Protection Fee. Said fee shall be pooled with other such fees, held in a proper escrow account, and used by the Association, in its unilateral discretion, to replace or repair damage done to any Oceanview Hatteras Estates improvement or infrastructure during construction of the Dwelling Unit, or for any other purpose whatsoever related to residential construction impact on, or for the general benefit of the community. The Infrastructure Protection Fee shall not be a waiver of or limitation on liability for acts that damage Association property.



The Committee may also from time to time and in addition to the Infrastructure Protection Fee, at its sole discretion, require of any contractor a cash or insurance performance bond to guarantee final site clean up and/or extraordinary road repairs necessitated by the actions of the contractor and his workers and subcontractors during the construction of any improvements on the Properties.

Any Owner of any Homesite or Dwelling Unit disagreeing with the finding of the Committee regarding the owner's application for approval may appeal the decision to the Board by giving written notice of appeal to the President of the Association within fifteen (15) days following receipt of a decision. The Board shall then call a Special Meeting of the Members whereat a vote will be held as to whether to override the Committee's decision. The decision of the Committee shall only be overridden by a two-thirds vote of the Members. The Owner agrees the Members' decision shall be a final and non-reviewable determination.

The Committee expressly reserves the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the Committee in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Homesite or Dwelling Unit.

All notices required to be given in this Section 3 shall be given in writing, hand-delivered or mailed postage prepaid, certified or registered mail, return receipt requested or deposited with an overnight carrier (such as, but not limited to, Federal Express).

(c) Application of the Article. This Article Three shall apply to any additions to the existing Property subsequently made subject to this Declaration and the terms and provisions of any Supplemental Declaration.

Section 4. Limitations as Construction Vehicle Access to Homesite. For the purpose of protecting the integrity of the Private Drive and for the safety of others who may use the Private Drive for vehicular and pedestrian access, all construction vehicles (that is, any vehicle related to the construction process, including, but not limited to engineers, planners, contractors, subcontractors and supply providers) shall access the homesite via the Emergency Access Easement as shown on the Plat. No such vehicles shall use the Private Drive until the driveway and parking area shall be paved in accordance with the Aesthetics Guidelines attached hereto.

Furthermore, any owner who is constructing on a homesite shall install silt fence or another type of temporary fencing along the easement line on the adjoining homesite (i.e., the homesite with which he shares the easement) so as to keep all refuse and activity on the owner's homesite or within the easement. The silt fence shall begin at the property line adjoining Highway 12 and shall extend 80 feet along and, if needed, past the emergency access easement line. The fencing shall be not less than 24" and no more than 48" tall.

ARTICLE FOUR. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity, except the Declarant, who is a record Owner of a fee simple interest in any homesite described in Exhibit A is subject by this Declaration to assessment by the Association; and every person or entity, including the Declarant, who is a record Owner of a fee simple



interest in any homesite 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. Any homesites still owned by the Declarant, and theretofore not conveyed by it, after three years from the date of this Declaration shall be subject to assessment.

Section 2. Voting Rights. There shall be one vote for each Homesite. When more than one person or entity holds an interest in any homesite, all such persons shall be Members, and the vote for such homesite shall be exercised as they, among themselves, determine and such persons shall designate one (1) person to vote for their homesite, but in no event shall more than one (1) vote be cast with respect to any such homesite. If the owners cannot agree then the first persons (present at the meeting) named as Grantee in their deed shall cast the vote.

Section 3. Membership in Hatteras Estates Property Owners' Association, Inc. On behalf of the individual owners, the Association shall be a member of the Hatteras Estates Property Owners' Association, Inc. (hereinafter HEOPA). Assessments by the HEOPA will be made to the Association which, in turn, will assess each Owner according to the Owner's prorata share of common expenses as set forth herein. Membership in the HEOPA shall entitle the owners, through the Association, to use and benefit from every common property or common amenity provided by or to HEOPA, including, but not limited to the boat docks. Owners' usage of these common properties and amenities shall be in accordance with rules and regulations promulgated by the HEOPA from time to time. The HEOPA, by and through its Board of Directors, and with the authority to do so, consent to membership of the Association in HEOPA as evidenced by the attached "Consent Document" attached hereto and labeled Exhibit D. HEOPA shall have no duty whatsoever to improve, maintain or control in any way the Common Properties of the Association or Oceanview Hatteras Estates or the properties of any Owner within Oceanview Hatteras Estates.

## ARTICLE FIVE. SHARED PROPERTY RIGHTS

Section 1. Ocean Access Easement and Private Drive Cross-Easement. Subject to the provisions of Section 2 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Properties, if any, and such easement shall be appurtenant to and shall pass with the title to every Homesite. The Common Properties include the ocean access easement. The private drive traversing the rear of each homesite lies within a 25-foot easement as shown on the Plat. Every owner has the right to use the 25-foot easement for the installation and maintenance of utilities and for pedestrian and vehicular access, egress in ingress between their respective lot and Elizabeth Avenue. The expense of maintenance, repair, and replacement shall be borne by the Association and then assessed to the owners.

Section 2. Emergency Access Easements. As shown on the plat, each homesite is provided emergency access to and from Highway 12 via an "Emergency Access Easement." This access is shared with the adjoining homesite and shall be kept in good repair at the expense of the owners of the homesites sharing the same. A bollard or a style and quality recommended by North Carolina Department of Transportation shall be used to limit use of this easement. This access shall not be used as a means of egress or regress from a homesite except (a) in emergency situations such as evacuation or fire, or health emergencies requiring ambulance service, (b) during construction of a dwelling situated on a homesite sharing the emergency access easement and (c) as a means of access for owners to move trash receptacles to and from Highway 12 as trash pick-up will not be provided down the Private Access Easement (also referred