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 and return to: Kitty Hawk, North Carolina 27949  
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SEA WHISPER CONDOMINIUMS

BOBBIE ALFERY  
 REGISTER OF DEEDS  
 DARE COUNTY, N.C.

DECLARATION

THIS DECLARATION, made this 31st day of March, 1989, by Sea Whisper Partnership, a North Carolina general partnership, ("Developer"), pursuant to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.

W I T N E S S E T H:

WHEREAS, Developer is the owner in fee simple of certain real estate situated in the Village of Hatteras, County of Dare, and State of North Carolina, legally described on Exhibit A, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate; and

WHEREAS, Developer desires to submit all of said property to the Act.

NOW, THEREFORE, Developer, as owner of said property, hereby declares as follows:

ARTICLE I.

Definitions

Definitions. As used herein, the following words and terms shall have the following meanings:

- 1.1. Act. The North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.
- 1.2. Association. Sea Whisper Homeowners Association, Inc., a nonprofit corporation organized under Chapter 55A, North Carolina General Statutes.
- 1.3. Board. The Board of Directors of the Association.
- 1.4. Bylaws. The Bylaws of the Association which are hereby incorporated herein and made a part hereof by this reference.
- 1.5. Common Elements. All portions of the Condominiums except the Units. Limited Common Elements are Common Elements.
- 1.6. Common Expenses. Expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.
- 1.7. Condominium. The condominium created by this Declaration.
- 1.8. Declarant. Developer and (i) any other persons who has executed this Declaration, or who hereafter executes an amendment to this Declaration, except Security Holders and except persons whose interests in the Property will not be conveyed to Unit Owners, and (ii) any person who succeeds to any Special Declarant Rights pursuant to Section 47C-3-104 of the Act.
- 1.9. Declarant Control Period. The period commencing on the date hereof and continuing until the earlier of (i) the date five (5) years after the date of the first conveyance of a Unit to a Unit Owner other than a Declarant, or (ii) the date upon which Declarant surrenders control of the Condominium, or (iii) the date sixty (60) days after the Declarant has conveyed

seventy-five (75%) percent of the Units to Unit Owners other than Declarant.

1.10. First Mortgage and First Mortgagee. A First Mortgage is a mortgage or deed of trust which has been recorded so as to give constructive notice thereof, and which is a first lien on the Units described therein. A first Mortgagee is a holder, from time to time, of a First Mortgage as shown by the records of the office of which the First Mortgage is recorded, including a purchaser at foreclosure sale upon foreclosure of a First Mortgage until expiration of the mortgagor's period of redemption. If there be more than one holder of a First Mortgage, they shall be considered as, and act as, one First Mortgagee for all purposes under this Declaration and the Bylaws.

1.11. Floor Plan. The floor plans of the Condominium recorded with, and by the Act made a part of, this Declaration, as the same may hereafter be amended.

1.12. Limited Common Elements. Those portions of the Common Elements allocated by operation of Section 47C-2-102(2) or (4) of the Act for exclusive use of one but fewer than all of the Units and also any Limited Common Elements specifically allocated to Units on Exhibit B.

1.13. Occupant. Any person or persons in possession of a Unit, including Unit Owners, the family members, lessees, guests and invitees of such person or persons, and family members, guests and invitees or such lessees.

1.14. Person. A natural person, corporation, partnership, trust or other entity, or any combination thereof.

1.15. Property. The real estate described on Exhibit A, together with all buildings and improvements now or hereafter contracted or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.16. Security for an Obligation. The vendor's interest in a contract for deed, mortgagee's interest in a mortgage, trustee's interest in a deed of trust, purchaser's interest under a sheriff's certificate of sale during the period of redemption, or the holder's interest in a lien.

1.17. Security Holder. Any person owning a Security for an Obligation in a Unit.

1.18. Special Declarant Rights. The rights reserved herein and in the Bylaws for the benefit of a Declarant, as follows: to complete the improvements indicated on the Floor Plans; to maintain sales offices, management offices, models and signs advertising the Condominiums; and to use easements through Common Elements; to elect, appoint or remove members of the Board during the Declarant Control Period. Declarant shall have no right to subdivide or convert Units owned by Declarant.

1.19. Unit. A portion of the Condominium, whether or not contained solely or partially within a building, together with its percentage of undivided interest in the Common Elements as set forth on Exhibit C. Each Unit is designated and delineated on the Floor Plans.

1.20. Unit Boundaries. The boundaries of each Unit, both as to vertical or horizontal planes, as shown on the Floor Plans, are undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the Unit, the undecorated surfaces of the ceiling facing the interior of the Unit, and the topmost surfaces of the subflooring, and include the decoration on all such interior panelling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all

spaces, interior partitions and other fixtures and improvements within such boundaries.

1.21. Unit Owner. The person or persons, including the Declarant, owning a Unit in fee simple, including contract-for-deed purchasers of a Unit, but excluding contract-for-deed purchasers of a Unit who are Security Holders, and also excluding all other Security Holders.

## ARTICLE II.

### Submission of Property to the Act

2.1. Submission. Developer hereby submits the Property to the Act.

2.2. Name. The Property shall hereafter be known as the Sea Whisper Condominium.

2.3. Division of Property into Separately Owned Units. Developer, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into eighteen (18) Units and does hereby designate all such Units for separate ownership, subject, however, to the provisions of Section 2.4 hereof.

2.4. Alterations of Units. Subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of Sections 47C-2-113(a) and (b) of the Act.

2.5. Limited Common Elements. The Limited Common Elements serving or designed to serve each Unit are hereby allocated solely and exclusively to each such Unit. In addition to those defined in Section 1.13, Limited Common Elements include those set forth on Exhibit B and are hereby allocated to Units as shown in Exhibit B.

2.6. Unit Allocations. The allocations of each Unit of a percentage of undivided interest in the Common Elements, of votes in the Association, and a percentage of the Common Expenses, are as stated on Exhibit C. The allocation of undivided interests in the Common Elements and of the Common Expenses is according to the area of each Unit to the area of all Units. The votes in the Association are equally allocated to all Units.

2.7. Encumbrances. The liens, defects and encumbrances on the Property to which the rights of Unit Owners and Occupants are hereby made subject are set out on Exhibit D.

2.8. Condominium Ordinances. The Condominium is not subject to any code, real estate use law, ordinance, charter provision, or regulation (i) prohibiting the condominium form of ownership, or (ii) imposing conditions or requirements upon developments under a different form of ownership. This statement is made pursuant to Section 47C-1-106 of the Act for the purpose of providing marketable title to the Units in the Condominium.

2.9. Reservation of Special Declarant Rights. Declarant hereby reserve all Special Declarant Rights.

## ARTICLE III.

### Additional Property

All of the property upon which the Condominium is constructed is set forth and described in Exhibit A to this Declaration. There are no other areas or properties available for expansion and there are no additional properties which will be added to the Condominium under the provisions of this Declaration.

ARTICLE IV.

Easements

4.1. Encroachments. In the event that, by reason of the construction, reconstruction, rehabilitation, alteration or improvement of the buildings or improvements comprising a part of the Property, any part of the Common Elements nor or hereafter encroaches upon any part of any Unit, or any part of any Unit, now or hereafter encroaches upon any part of the Common Elements, or upon any part of another Unit, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Units so encroached upon.

4.2. Easements Through Walls. Easements are hereby declared and granted to the Association and to such persons as are authorized by the Association, to install, lay, maintain, repair and replace any chutes, flues, ducts, vents, pipes, wires, conduits and other utility installations, and structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the boundaries of any Unit.

4.3. Easements to Repair, Maintain, Restore and Reconstruct. Wherever in, and whenever by, this Declaration, the Bylaws or the Act, a Unit Owner, the Association, the Board, or any other person, is authorized to enter upon a Unit or the Common Elements to repair, maintain, restore or reconstruct all or any part of a Unit or the Common Elements, such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted.

4.4. Declarant's Easement. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant Rights, and completing the development and construction of the Condominium, which easements shall exist as long as reasonably necessary for such purposes.

4.5. Easements to Run With Land. All easements and rights described in this Article IV are appurtenant easements running with the land, and except as otherwise expressly provided in this Article IV shall be perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, the Association, Unit Owners, Occupants, Security Holders and any other person having any interest in the Condominium or any part of any thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article IV, whether or not specifically mentioned in any such conveyance or encumbrance.

4.6. Cable Television Easement. Declarant is presently negotiating a cable television wiring agreement with Outer Banks Cablevision Associates which would provide such company with an easement for installing and maintaining a line connecting the cable television wire located in the building to the cable system. Any such agreement would be entered into by the Declarant, the cable television company and the Association.

ARTICLE V.

Restrictions, Conditions and Covenants

5.1. Compliance with Declaration, Bylaws and Rules and Regulations. Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the Bylaws, the Articles of Incorporation of the Association, and rules and regulations promulgated by the Board or the Association, as

amended. Failure to comply shall be grounds for an action by the Association, and Aggrieved Unit Owner, or any person adversely affected, for recovery of damages, injunction or other relief.

5.2. Administration of Condominium. The Condominium shall be administered in accordance with the provisions of the Act, this Declaration and the Bylaws.

5.3. Use Restricted; Use by Declarants.

(a) The Units shall be occupied and used by Unit Owners and Occupants for residential purposes only.

(b) No "For Sale" or "For Rent" sign or other window displays or advertising shall be maintained or permitted by any Unit Owner or Occupant on any part of the Condominium without the prior written consent of the Board.

(c) The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, Declarant may maintain sales offices for sales of Units in the Condominium and models. Declarant shall have the right to relocate, from time to time, and to discontinue and reestablish, from time to time, within the Condominium, until all of the Units have been conveyed to a Unit Owner other than a Declarant, any one or more of such offices or models. Declarant also shall have the right to change the use or combination of uses of such offices or models, provided that such offices or models shall be used only for sales offices or models. The total number of such offices or models maintained at any time by Declarant shall not exceed the number set out above, and the size of any such relocated or reestablished office or model shall not exceed the size of the largest Unit in the Condominium.

(d) Declarant also may maintain signs on the Common Elements advertising the Condominium until all of the Units have been conveyed to Unit Owners other than a Declarant. Declarant shall remove all such signs not later than thirty (30) days after all of the Units have been conveyed to Unit Owners other than Declarant and shall repair or pay for the repair of all damage done by removal of such signs.

(e) The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, the Association may maintain an office in the Condominium for management of the Condominium.

5.4. Hazardous Use and Waste. Nothing shall be done to or kept in any Unit or the Common Elements that will increase any rate of insurance maintained with respect to the Condominium without the prior written consent of the board.

ARTICLE VI.

Assessments

6.1. Assessment Liens. The Board has the power to levy assessments against the Units for Common Expenses. Such assessments shall be a lien on the Units against which they are assessed, and if any payment thereof becomes delinquent, the lien may be foreclosed and the Unit sold, or a money judgment obtained against the person liable therefore, all as set forth in the bylaws.

6.2. Personal Liability of Transferees; State; Liability of First Mortgagee.

(a) The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of said Unit unless said delinquent assessments are expressly assumed by said transferee.

(b) Any transferee referred to in (a) above shall be entitled to a statement from the board, pursuant to Section 8.11 of the Bylaws, and such transferee's Unit shall not be subject to a lien for any unpaid assessments against such Unit in excess of the amount therein set forth.

(c) Where a mortgagee or the beneficiary of a deed of trust; or other person claiming through such deed of trust, pursuant to the remedies provided in a deed of trust, or by foreclosures or by a deed, or assignment, in lieu of foreclosure, obtains title to a Unit, the liability of such mortgagee or such other person for assessments shall be only for the assessments, or installments thereof, that would become delinquent, if not paid, after acquisition of title. For purposes hereof, title to a Unit shall be deemed acquired by foreclosure upon expiration of the applicable period of redemption.

(d) Without releasing the transferor from any liability therefor, any unpaid portion of assessments which is not a lien under (b) above or, resulting as provided in (c) above, from the exercise of remedies in a deed of trust, or by foreclosure thereof or by deed, or by assignment, in lieu of such foreclosure, shall be a Common Expense collectible from all Unit Owners, including the transferee under (b) above and the purchaser at foreclosure or such other person under (c) above who acquires ownership by foreclosure or by deed, or assignment, in lieu of foreclosure.

6.3. Prohibition of Exemption from Liability for Contribution Toward Common Expenses. No Unit Owner may exempt himself from liability for his share of the Common Expenses assessed by the Association by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit or otherwise.

#### ARTICLE VII.

##### Management, Maintenance, Repairs, Replacements, Alterations and Improvements

###### 7.1. Common Elements.

(a) By the Association. The management, replacement, maintenance, repair, alteration and improvement of the Common elements shall be the responsibility of the Association, and, subject to the provisions of Section 7.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by the Unit Owners pursuant to Section 7.1(b) hereof. All damage caused to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense.

(b) By Unit Owners. Each Unit Owner shall pay all costs to repair and replace all portions of the Common Elements that may become damaged or destroyed by reason of his intentional acts or the intentional acts of any Occupant of his Unit. Such payment shall be made upon demand made by the Association.

###### 7.2. Common Expenses Associated with Limited Common Elements or Benefitting Less Than All Units.

(a) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Elements was allocated at the time the expense was incurred.

(b) In addition, the Association may assess any Common Expense benefitting less than all of the units against the Units benefitted in proportion to their Common Expense liability.

7.3. Units. Each Unit Owner shall maintain his Unit at all times in a good and clean condition, and repair and replace, at his expense, all portions of this Unit; shall perform his responsibilities in such manner as not to unreasonably disturb other Occupants; shall promptly report to the Board, or its agents, any defect or need for repairs the responsibility for which is that of the Association; and, to the extent that such expense is not covered by the proceeds of insurance carried by the Association, shall pay all costs to repair and replace any portion of another Unit that has become damaged or destroyed by reason of his own acts or omissions, or the acts or omissions of any Occupant of his Unit. Nothing herein contained shall modify any waiver by insurance companies of rights of subrogation.

7.4. Waiver of Claims. Except only as provided in Section 7.5(a) and (b), the Association agrees that it shall make no claim against a Unit Owner or Occupant, and each Unit Owner and Occupant agrees that he shall make no claim against the Association, the members of the Board, officers of the Association, or employees or agents of any thereof, or against any manager retained by the Board, or his or its officers, directors, employees or agents, or other Unit Owners or Occupants, for any loss or damage to any of the Property, or to a Unit or personal property therein, even if caused by the omission or neglect of any one or more of such persons and all such claims are hereby waived and released; provided that this waiver shall not apply to any such loss or damage due to intentional acts.

7.5. Right of Entry.

(a) By the Association. The Association, and any person authorized by the Association, may enter any Unit or any of the limited Common Elements in case of any emergency or dangerous condition or situation originating in or threatening that Unit or any of the limited Common Elements. The Association, and any person authorized by the Association, after reasonable notice to a Unit Owner or Occupant, may enter that Unit or any of the Limited Common Elements for the purpose of performing any of the Association's duties or obligations or exercising any of the Association's power under the Act, this Declaration or the Bylaws with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. Notwithstanding Section 7.4, the Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.

(b) By Unit Owners. Each Unit Owner and Occupant shall allow other Unit Owners and Occupants, and their representatives, to enter his Unit, or Limited Common Elements allocated to his Unit, when reasonably necessary for the purpose of altering, maintaining, repairing or replacing the Unit of, or performing the duties and obligations under the Act, this Declaration or the Bylaws of the Unit Owner or Occupant making such entry, provided that requests for entry are made in advance and that such entry is at a time convenient to the Unit Owner or Occupant whose Unit or Limited Common Element is to be entered. In case of any emergency or dangerous condition or situation, such right of entry shall be immediate. Notwithstanding Section 7.4, the person making such entry shall be responsible for repair of any damage caused by such person to the entered Unit or Limited Common Element.

ARTICLE VIII.

Insurance

8.1. Casualty Insurance. The Association shall maintain casualty insurance upon the property in the name of, and the

proceeds thereof shall be payable to, the Association, as trustee for all Unit Owners and Security Holders as their interests may appear, and be disbursed pursuant to the Act. Such insurance shall be in the amount equal to not less than the full insurable value of the Property on a replacement cost basis and shall insure against such risks and contain such provisions as the Board from time to time shall determine, but a minimum shall conform in all respects to the requirements of the Act, and shall provide that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making cash settlement, such option shall not be exercisable if such restoration is prohibited pursuant to Section 47C-3-112(g) of the Act.

8.2. Public Liability Insurance. The Association shall maintain public liability insurance for the benefit of the Unit Owners, Occupants and holders of a vendor's interest in a contract for deed on a Unit, the Association, the Board the manager, if any, the Declarant, and their respective officers, directors, agents and employees, in such amounts and with such coverage as shall be determined by the Board; provided that the public liability insurance shall be for at least One Million (\$1,000,000.00) Dollars per occurrence for death, bodily injury and property damage. Said insurance shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; insure all of such benefited parties against such liability arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the streets, sidewalks and public spaces adjoining the Condominium; and insure the Association, the Board, the manager, if any, and their respective officers, directors, agents and employees against such liability arising out of or in connection with the use or maintenance of the Units.

8.3. Fidelity Coverage. Fidelity coverage shall be maintained by the Association in commercial blanket form covering each director and officer of the Association, any employee or agent of the Association and any other person handling or responsible for handling funds of the Association in the face amount of at least the greater of (i) one and one-half (1-1/2) times the estimated annual operating expenses and reserves of the Association, or (ii) the sum of three months' aggregate assessments on all units plus the Association's reserve funds. Such bonds shall contain an appropriate endorsement to cover persons who serve without compensation. The premiums on such bonds shall be a Common Expense.

8.4. Other Insurance. The Association may procure such other insurance, including worker's compensation insurance, as it from time to time deem appropriate to protect the Association of the Unit Owners. If at least one Unit is subject to FNMA/FHLMC financing, the Association shall obtain and keep in force such insurance as the standards for FNMA/FHLMC approved loans shall require from time to time.

8.5. Insurance Trust. The Board may engage, and pay as a Common Expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds upon such terms as the board shall determine, consistent with the provisions of the Act and this Declaration.

8.6. Individual Policy for Unit Owners. Each Unit Owner may obtain insurance, at his own expense, affording personal property, and any other coverage obtainable, to the extent and in the amounts such Unit Owner deems necessary to protect his own interests; provided that any such insurance shall contain waivers pursuant to Section 7.3 and shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of proceeds that would otherwise be payable on the insurance purchased by the Association due to the



proration of insurance purchased by a Unit Owner under this Section, such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction to the Association upon demand, and assigns the proceeds of his insurance, to the extent of such reduction, to the Association.

ARTICLE IX.

Casualty Damage

If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced, and proceeds of insurance shall be used and applied in accordance with the provisions of Section 47C-3-112(d) and (g) of the Act.

ARTICLE X.

Condemnation

In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all of any part of the property, the same shall be repaired or restored, and the awards paid on account thereof shall be used and applied in accordance with Section 47C-1-107 of the Act.

ARTICLE XI.

Termination

The Condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act.

ARTICLE XII.

Amendment

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47C-2-108 and 47C-2-117 of the Act, except that no amendment altering or impairing Special Declarant Rights may be made without the written consent of Declarant.

ARTICLE XIII.

Rights of First Mortgagees;  
VA, FNMA and FHLMC Provisions

The following provisions shall take precedence over all other provision of this Declaration and the Bylaws:

13.1. Amendments during Declarant Control Period. Any amendment to this Declaration or to the Bylaws during the Declarant Control Period shall be subject to the prior approval of the elected representative of a majority of the holders of the first mortgage position FNMA/FHLMC secured loans provided, however, that, if said Administrator fails to respond to a written request for approval within thirty (30) days of said request, approval shall be deemed to have been given.

13.2. Availability of Condominium Documents, Books, Records and Financial Statements. The Association shall, upon request and during normal business hours, make available for inspection by Unit Owners and the First Mortgagees and the insurers and guarantors of a First Mortgage on any Unit, current copies of the Declaration, the Bylaws, other rules and regulations co-governing the Condominium and the books, records and financial statements of the Association. The Association shall provide an audited financial statement for the preceding fiscal year if requested in writing by a First Mortgagee or insurer or guarantor of a First Mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective

purchasers of Units, current copies of the Declaration, Bylaws, other rules and regulations governing the Condominium, and the most recent annual audited financial statement (if one is prepared).

13.3. Successors' Personal Obligation for Delinquent Assessment. The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the successors in title or interest to said Unit unless said delinquent assessments are expressly assumed by them.

13.4. Rights of Action. The Association and any aggrieved Unit Owner shall have a right of action against Unit Owners and any aggrieved Unit Owner shall have a right of action against the Association for failure to comply with the regulations, and decision of the Association made pursuant to authority granted to the Association in this Declaration and the Bylaws.

13.5. Management and Other Agreements. Any management agreement between the Declarant or the Association and professional manager or any other agreement providing for services of the developer, sponsor, builder or Declarant shall be terminable by either party thereto without cause and without payment of a termination fee upon not more than thirty (30) days' prior written notice and shall not exceed a term of three (3) years, subject to renewal by the consent of both parties.

13.6. Right of First Refusal. The right of Unit Owners to sell, transfer, mortgage or otherwise convey his interest in his Unit shall not be subject to any right of first refusal.

13.7. Consent of First Mortgagees. This Section 13.7 shall be effective only if, at the time this Section would apply, at least one Unit is subject to financing. Any decision to terminate the Condominium for reasons other than substantial destruction or condemnation of the property shall require the prior written consent of Eligible Mortgage Holders, as defined in Section 13.9 hereof, representing at least 67% of the votes allocated to Units subject to First Mortgages held by Eligible Mortgage Holders, or such greater requirements specified by the Act. Any amendment to the Declaration or Bylaws which changes any of the following shall require the prior written consent of Unit Owners holding at least 67% of the total votes in the Association and of Eligible Mortgage Holders representing at least 51% of the votes of allocated Units subject to First Mortgages held by Eligible Mortgage Holders, or such greater requirements specified by the Act or hereunder:

- (a) voting rights;
- (b) assessments, assessment liens or subordination of such liens;
- (c) reserves for maintenance, repair and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- (f) boundaries of any Unit;
- (g) convertibility of Units into Common Elements or Common Elements into Units;
- (h) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (i) insurance or fidelity bonds;

- (j) leasing of Units;
- (k) imposition of any restrictions on a Unit Owner's right to sell, transfer or otherwise convey his Unit;
- (l) a decision by the Association to establish self-management when professional management has been required previously by an Eligible Mortgage Holder;
- (m) restoration or repair of the Condominium (after damage or destruction or partial condemnation) in a manner other than that specified in this Declaration or the Bylaws;
- (n) any action to terminate the legal status of the Condominium after substantial damage or destruction of condemnation; or
- (o) any provisions that expressly benefit First Mortgagees or insurers or guarantors of First Mortgages.

13.8. Consent of First Mortgagees or Unit Owners. This Section 13.8 shall be effective only if, at the time this Section would apply, at least one Unit is subject to FNMA/FHLMC financing. Unless First Mortgagees holding at least 66 2/3% of the votes allocated to First Mortgagees (except First Mortgagees having one vote per Unit financed, or such higher percentage as is required by law, of the First Mortgagees (based upon one vote for each First Mortgage owned) and Unit Owners (other than a Declarant) holding at least 66 2/3% of the total votes in the Association have given their prior written approval, of such greater requirements specified in the Act or hereunder have been satisfied, the Association shall not be entitled to:

- (a) By act of omission, seek to abandon or terminate the Condominium;
- (b) change the prorata interest or obligations of any Unit for the purpose of:
  - (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or
  - (ii) determining the prorata share of ownership of each Unit in the Common Elements;
- (c) partition or subdivide any Unit;
- (d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause);
- (e) use hazard insurance proceeds for losses to anypart of the Condominium (whether to Units or to Common Elements) for other than repair, replacement or reconstruction thereof.

13.9. Notice. Each First Mortgagee and each insurer or guarantor of a First Mortgage, upon written request stating its name and address and describing the Unit encumbered by the First Mortgage, held, insured or guaranteed, shall be entitled to timely written notification by the Association of (i) any proposed action which requires consent of a specified percentage of First Mortgagees; (ii) any condemnation or casualty loss that affects either material portion of the Condominium or the Unit securing its First Mortgage; (iii) any 60 day delinquency in the payment of assessments or charges owed any the Unit Owner of the Unit on which the First Mortgagee held its First Mortgage or in the performance of any obligation under this Declaration or the

Bylaws by said Unit Owner; or (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Each First Mortgagee who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders shall be considered an "Eligible Mortgage Holder." With respect only to non-material amendments (which excludes items (a) to (o) of Section 13.7), such as for the correction of technical errors or for clarification, any First Mortgagee who receives a written request by the Association, or any Unit Owner, to approve an addition of amendment to the Declaration or Bylaws who does not deliver or post to the requesting part a negative response within thirty (30) days shall be deemed to have approved such request.

13.10. Assessments. Assessments shall be due and payable in monthly installments. As provided in Article VIII of the Bylaws and as legally required by Section 47C-3-115 of the Act, Declarant shall pay all accrued expenses of the Condominium until assessments are levied against the Units. An assessment shall be deemed levied against a Unit upon the giving of notice by the Board to a member of the Association who is a Unit Owner of that Unit. Unit Owners shall have no obligation to pay monthly assessments until an assessment is levied. Assessments will begin at such time as the Board elects.

13.11. Rights of First Mortgagee; Insurance Proceeds or Condemnation Awards. With respect to First Mortgages held by or for the benefit of FNMA/FHMLC, no provision of this Declaration or the Bylaws shall be deemed to give a Unit Owner, or any other party, priority over the rights of a First Mortgagee pursuant to its First Mortgage on said Unit Owner's Unit, in the case of a distribution to said Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

ARTICLE XIV.

General Provisions

14.1. Conflict with the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or of any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstances.

14.2. Interpretation of Declaration. Whenever appropriate singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part of which they appear.

14.3. Captions. The captions herein are only for the convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.

14.4. Exhibits. The exhibits referenced in this Declaration are incorporated herein by reference, whether or not they are attached hereto and recorded herewith.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first written above.

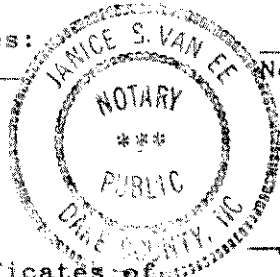
SEA WHISPER PARTNERSHIP

~~BY: THOMAS G. HOLIAN, General Partner~~ (SEAL)

STATE OF NORTH CAROLINA  
COUNTY ~~WAY~~ OF DARE

I, a Notary Public for the aforementioned State and County do hereby certify that THOMAS G. HOLIAN, General Partner of SEA WHISPER PARTNERSHIP, a North Carolina general partnership, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and seal, this the 31st day of March, 1989.

My commission expires:  
August 24, 1992



Janice S. Van Ee  
Notary Public

NORTH CAROLINA  
DARE COUNTY

The foregoing Certificates of Janice S. Van Ee  
a Notary Public of Dare Co., NC  
is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Dorris A. Fry  
REGISTER OF DEEDS

Vanella Mc Murson  
BY: DEPUTY ASSISTANT-REGISTER OF DEEDS

## EXHIBIT A

All that certain lot or parcel of land lying and being near the Village of Hatteras, in Hatteras Township, Dare County, North Carolina, adjoining the lands now or formerly owned by H. Curtis Gray, Lawrence L. Austin, and others, and bounded as follows:

Beginning at a concrete marker situated in and on the North margin or right of way of North Carolina State Road No. 12 leading to the Village of Hatteras in Dare County, North Carolina, said highway having a right of way 100 feet in width at this point, said concrete marker and point of beginning being 300 feet measured along the North margin or right of way of the aforesaid highway South 76 deg. West from a concrete monument or other marker situated in and marking the point of intersection of the North margin or right of way of said highway by the West line of the lands of the United States of America, comprising a portion of the Cape Hatteras National Seashore Recreational Area, said point of beginning being also in and marking the Southwest corner of the lands now or formerly owned by H. Curtis Gray, running thence from the beginning point along the Gray West line North 22 deg. West 423.3 feet to Pamlico Sound, said line being marked by an iron pipe therein which is 7 feet South 22 deg. East from Pamlico Sound; thence along the Pamlico Sound following the various courses and meanderings thereof in a general westerly direction to a point 100.07 feet on bearing North 59 deg. 44 min. East from the terminal point of the next preceding call; thence running along the edge of a creek leading into Pamlico Sound to a point 52.67 feet on bearing North 48 deg. 03 min. 41 sec. East from the terminal point of the next preceding call; thence running South 22 deg. East 3.92 feet to an iron pipe in and on the east line of lands now or formerly owned by Lawrence L. Austin, which said iron pipe is located on a tie line distance of 50 feet on a bearing North 60 deg. East from another iron pipe which bears North 55 deg. 15 min. 40 sec. East from the iron pipe situate 7 feet from the edge of Pamlico Sound and referred to in the first call above; thence continuing South 22 deg. East 366.88 feet to an iron pipe situated in and on the North margin or right of way of North Carolina State Road No. 12; thence along the north margin or right of way of said State Road No. 12 North 76 deg. East 150 feet to the point of beginning, as shown and delineated on that certain map or plat entitled: "Survey for Harvey L. Pettit and wife, Veronica A. Pettit, a Parcel containing 59,449 Sq. Ft. (1.36 Ac.) in Hatteras Village, Hatteras Township, Dare County, North Carolina", said map made by F. Richard Quible, Registered Surveyor, dated the 28th day of July, 1987, and referred to herein and made part hereof for a more accurate description of the lands hereinabove described.

EXHIBIT B

For the purpose of the Sea Whisper  
Condominium project, there are no Limited  
Common Elements.

EXHIBIT C

<u>Unit No.</u>	<u>Percentage of Undivided Interest in Common Elements</u>	<u>Percentage of Common Expenses</u>	<u>Votes in Association</u>
1	4.74	4.74	1/18
2	4.74	4.74	1/18
3	4.74	4.74	1/18
4	4.74	4.74	1/18
5	4.74	4.74	1/18
6	4.74	4.74	1/18
7	4.74	4.74	1/18
8	4.74	4.74	1/18
9	4.74	4.74	1/18
10	6.37	6.37	1/18
11	6.37	6.37	1/18
12	6.37	6.37	1/18
13	6.37	6.37	1/18
14	6.37	6.37	1/18
15	6.37	6.37	1/18
16	6.37	6.37	1/18
17	6.37	6.37	1/18
18	6.38	6.38	1/18



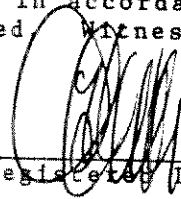
## EXHIBIT D

List of liens, defects and encumbrances to which the rights of unit owners are subject:

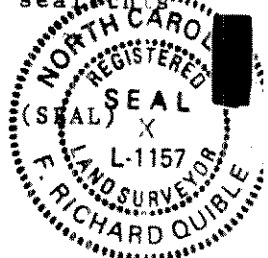
1. General service and utility easements to supply utility service to the condominium property.
2. Rights of the association and the unit owners and the declarant set forth in the declaration of unit ownership and the related documents; plats and plans, and bylaws.
3. Construction loan and permanent financing, whether renewed or extended and whether represented by the existing financing for developer now in place; except that the individual units and the respective percentages of common ownership will be released prior to conveyance to the unit owners.
4. The provisions of Chapter 47C of the North Carolina general Statutes.
5. Deed of trust from Sea Whisper, a North Carolina general partnership, to Starkey Sharp, Trustee, in favor of Harvey L. Pettit et ux, securing \$200,000.00, recorded in Book 570, page 226, Dare County Registry.

ATTACHMENT TO DECLARATION  
SURVEYOR'S CERTIFICATE

I, F. Richard Quible, Registered Land Surveyor, certify that the plat entitled "Physical Survey of Sea Whisper Condominiums for Tom Holian" was drawn from an actual field land survey; that the error of closure as calculated by latitudes and departures is 1:10,000; that it was prepared in accordance with North Carolina General Statute 47-30 as amended. Witness my hand and seal, 12th day of April, 1989.



Registered Land Surveyor

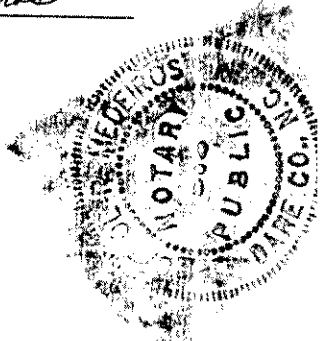


NORTH CAROLINA  
DARE COUNTY

I, a Notary Public for the aforementioned State and County do hereby certify that F. RICHARD QUILBE, Registered Land Surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and seal, this the 12th day of April, 1989.

My commission expires:  
12-19-93

Carol R. Madeline  
Notary Public



ATTACHMENT TO DECLARATION  
CERTIFICATE OF PROFESSIONAL ENGINEER

The undersigned, a professional engineer, registered under the provisions of North Carolina General Statute 89(C) does hereby certify that the attached plans of the Sea Whisper Condominium, identified as construction drawings labeled "SEA WHISPER-HATTERAS" Sheets A-1 through A-5 and S-1, and the site layout labeled "PHYSICAL SURVEY of SEA WHISPER CONDOMINIUMS" prepared by F. Richard Quible, Registered Land Surveyor, do accurately depict the site layout and Units 1 through 18 as to the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units as built. Further the condominium is substantially completed in accordance with the requirements of North Carolina General Statute Chapter 47C-2-101.

WITNESS my hand and seal, this the 13 day of April, 1989.



Ralph D. Calfee (SEAL)  
Professional Engineer

NORTH CAROLINA  
DARE COUNTY

I, a Notary Public for the aforementioned State and County do hereby certify that RALPH D. CALFEE, a professional engineer, personally appeared before me this day and being by me first duly sworn, declared that he signed the foregoing document in his capacity as an engineer, that he has read the foregoing document, that he was authorized to sign the document and the statements contained therein are true. Witness my hand and seal, this the 13th day of April, 1989.

My commission expires:  
8-24-92

Janice S. Vance  
Notary Public