

NORTH CAROLINA  
DARE COUNTY

DECLARATION OF PROTECTIVE COVENANTS  
BALLAST POINT SUBDIVISION 4 35  
PIRATE'S COVE, PHASE I

FILED

Prepared by  
and  
Return to:  
WILLIAM V. POWER  
ATTORNEY AT LAW  
KITTY HAWK, N.C. 27949

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THIS DECLARATION OF PROTECTIVE COVENANTS, made this 10th day of November, 1993, by ROANOKE PROPERTIES LIMITED PARTNERSHIP, a North Carolina limited partnership, hereinafter called the "Declarant";

W I T N E S S E T H :

THAT WHEREAS, the Declarant is the owner of the real property described in Article I of this Declaration and is desirous of subjecting the said real property to the Protective Covenants hereinafter set forth, each and all of which is and are for the benefit of such property and for each owner thereof, and shall inure to the benefit of and pass and run with said real property, and each and every lot or parcel which is a subdivided portion thereof, and shall apply to and bind each and every owner thereof and the successors in interest of any owner thereof.

NOW, THEREFORE, the Declarant hereby declares that the real property described in and referred to in Article I hereof is and shall be held, transferred, sold and conveyed subject to the Protective Covenants set forth below:

ARTICLE I

REAL PROPERTY AND INTENT. The real property which is, and shall be held, transferred, sold and conveyed subject to the Protective Covenants set forth in this Declaration is located in Dare County, North Carolina, and is more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The real property described in Article I hereof is subjected to the Protective Covenants hereby declared to insure the best use and the most appropriate development and improvements of each lot thereof; to protect the owners of lots against such improper use of surrounding lots as will depreciate the value of their property; to preserve so far as practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials, to obtain harmonious color schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on lots; to prevent haphazard and in-harmonious improvements on lots; to secure and maintain proper set-backs from streets, and adequate free spaces between structures, and in general to provide

adequately for a high type and quality of improvements in said property and thereby to enhance the value of investments made by purchasers of lots therein.

## ARTICLE II

LAND USE AND BUILDING TYPE. Except as otherwise provided herein no lot shall be used for any purpose other than for single-family residential purposes. As used herein, the term "single-family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than ten (10) persons not so related who maintain a common household in a dwelling constructed upon a lot. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed forty-five feet (45') in height measured from average ground level and a private garage for not more than three cars. However, a lot may be used for the location of a well, or as a utility lot including the location thereon of trash containers (screened), house and service lines and facilities and well equipment and other utility services. Also, a lot and building thereon may be used as an amenity and recreational facility owned and operated by the Declarant or Pirate's Cove Homeowners' Association, Inc. or for the dedication by the Declarant of a street or other right of way.

## ARTICLE III

SITE AND BUILDING PLANS APPROVAL. No building, fence, swimming pool, or any other structure shall be erected, placed, moved onto or altered on any lot or premises in the Ballast Point Subdivision until the building plans, specifications, and plot or site plan showing the proposed location on the lot of such improvements, have been approved in writing as to conformity and harmony of external design with existing improvements in the development, and as to location of the improvements with respect to topography and finished ground elevation by an architectural review committee (the Architectural Review Board or "A.R.B.") composed of three persons designated and appointed by Declarant or its assigns. In the event said committee fails to approve or disapprove such design or location within sixty days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection of such improvements or the making of such alterations has been commenced prior to the substantial completion thereof in the case of major improvements, such approval will not be required and this covenant will be deemed to have been fully complied with. Members of such committee shall be entitled to compensation for services performed pursuant to this covenant. The Declarant has promulgated an initial Architectural Review Board Application containing the requirements for proper review and approval of site and building plans. Said Application is

hereby incorporated by reference herein as if set forth word for word and shall be the form used until otherwise amended by the A.R.B.

The A.R.B. shall charge a fee of \$300.00 to defray the costs of the review procedures contemplated hereunder.

The A.R.B. will provide each owner of a lot within Ballast Point, Phase I a list of standards and guidelines to be followed with regard to improvements erected within the subdivision. Said list is incorporated by reference herein as if set forth word for word, and shall be binding upon all owners and purchasers of lots in Ballast Point.

The exterior appearance and the landscaping of each dwelling are considered extremely important by the developer in order to maintain the standards of quality, environment, aesthetics, quality of life, and overall appearance of this subdivision.

The following items must be submitted to the A.R.B. in order for the plans to be reviewed: site plans, house building or construction plans, elevation plans, landscape plans (showing walks, drives, and type, size and location of major plantings and shrubbery and grass) and samples of exterior siding and roofing materials and colors. The site plans must indicate the distances to existing structures and lot lines on the same or adjacent lots.

Each lot owner must also comply with all permit requirements of municipal and other governmental authorities before beginning construction, including, but not limited to, the obtaining of a CAMA permit in the event such a permit is required. All built upon area shall be at least 30 feet from mean high water of all surface waters classified as SA waters.

#### ARTICLE IV

**DWELLING SIZE AND DRIVEWAYS.** Except with the prior written approval of the A.R.B., no single-story residential structure which has a heated area of less than 1700 square feet, exclusive of porches, breeze-ways, steps and garages, shall be erected or placed or permitted to remain on any lot; no story and one-half, residential structure which has a heated area of less than 1900 square feet, exclusive of porches, breeze-ways, steps and garages, shall be erected or placed or permitted to remain on any lot; no two story residence exclusive of porches, breeze-ways, steps and garages which has a heated area of less than 2000 square feet shall be permitted.

A building used in conjunction with a water, sewer or public utility shall be exempt from the size requirements contained herein. All driveway material must meet the approval of the A.R.B. If driveway materials are installed that have not been approved by the A.R.B., the A.R.B. shall have the right to require the removal of any such driveway materials and the

replacement thereof with materials suitable to the A.R.B. Declarant reserves the right to waive in writing any minor violation of this Article, and for purposes hereof, any violation which does not exceed 20% shall be considered a minor violation.

#### ARTICLE V

**BUILDING LOCATION.** In addition to and notwithstanding other applicable setback provisions contained herein, no building shall be located on any lot nearer to the street than 20 feet, nearer to the CAMA line or any canal than 10 feet, or nearer to the side lines of lots than 8 feet. No structure shall be located closer than 20 feet from an adjacent structure. In the event other setback provisions contained herein shall conflict with the foregoing setback provisions, the more restrictive setbacks shall apply. The A.R.B. may waive a violation of the set-back requirement provided for herein. This waiver shall be in writing. A structure may be constructed or located closer than 20 feet from an adjacent structure if the structure under review meets all applicable fire code standards. For the purpose of this covenant, eaves, steps, chimneys and stoops shall not be considered a part of the building. However, this Article shall not be construed so as to permit or authorize any portion of a building on a lot to encroach upon another lot. Declarant reserves the right to waive in writing any minor violation of this Article.

#### ARTICLE VI

**EASEMENTS.** Easements for installation and maintenance of utilities (cable, water, sewer, electricity, telephone, walkways, etc.) and drainage facilities are reserved as shown on the recorded plat and over the front 15 feet (canal side or sound side) and the rear 15 feet (streetside) of each lot and 5 feet on each side line unless shown in excess of such distances on the recorded subdivision plat, in which case the plat shall control. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the use, installation and maintenance of the easements. The easement on each lot and all improvements within the easements shall be continuously maintained by the owner of each lot, except for those improvements for which a public authority or utility company is responsible for maintaining.

The developer reserves the right to subject the real property in this subdivision to a contract with North Carolina Power for the installation of underground electric cables which may require an initial contribution and/or the installation of street lighting, which may or will require a continuing monthly or other periodic payment to North Carolina Power by the Pirate's Cove Homeowners' Association, Inc.

The Declarant reserves for itself, its successors and assigns, and for the Pirate's Cove Homeowners' Association, Inc., its members, agents, employees, successors and assigns, access, ingress and egress easements over and across those certain areas designated as 15' Access Easement as shown on the recorded subdivision plat to provide access to and from the Canal and Pirates Way. The Declarant also reserves the right, for itself, its successors and assigns, to install, construct and maintain walkways, boardwalks and related improvements over, across and through said 15' Access Easement areas as shown on the recorded subdivision plat.

Easements are hereby reserved over and through each and every lot in the Ballast Point Subdivision for the use, benefit and enjoyment of the Declarant, its agents, employees, successors and assigns for the installation and maintenance of docks, piers, boat slips, roads, walkways, streets and parking areas and for cable television services, sewage, water and other utility services, and such other reasonable services that the Declarant may, in its sole discretion, provide to said lots. Easements are also hereby granted over and through each and every lot in the Ballast Point Subdivision for the use, benefit and enjoyment of the Pirate's Cove Homeowners' Association, Inc., its agents, employees, successors and assigns for the installation and maintenance of any docks, piers, boat slips, roads, walkways, streets, parking areas and such other properties or improvements in and adjacent to the Ballast Point Subdivision owned by or entrusted to the Pirate's Cove Homeowners' Association, Inc. Said easements in favor of Pirate's Cove Homeowners' Association, Inc. shall include the rights of access, ingress and egress to fulfill its obligations under the By-Laws of said Association and all applicable Declarations and to enforce said By-Laws and Declarations for the benefit of and against all lot owners in the Ballast Point Subdivision. Easements of access, ingress and egress are hereby granted to Dare County and the Town of Manteo over and through each and every lot in the Ballast Point Subdivision as are reasonably necessary for the fulfilling of its obligations and purposes as a governmental body and for the providing of utility and other rights of access to the lots in the subdivision. Any easement and rights of access herein granted or reserved by this Article shall not obligate the person, corporation, municipality, or other entity in whose favor the easement has been granted or reserved to provide the services or improvements for which the easements have been created, unless, in each instance, they are otherwise obligated to provide such service or improvement.

The docks, piers and boat slips located along and adjacent to that certain canal which borders the platted lots in the Ballast Point Subdivision are the property of and are hereby entrusted to the Pirate's Cove Homeowners' Association, Inc., to be assigned to lot owners in Ballast Point Subdivision and to be otherwise repaired, maintained, owned and administered by the said Association in accordance with its Bylaws attached hereto. No portion of any of the said docks, piers and boat slips which

may be located upon and within the platted lots of Ballast Point Subdivision shall be considered a part of such lots and the owner of such lots may not claim to be the fee simple owner of any such portions of the docks, piers and boatslips located on their lot(s). Said lot owners are granted a non-exclusive easement of access, ingress and egress over the docks, piers and boatslips of the Pirate's Cove Homeowners' Association, Inc., as is otherwise herein provided.

No fueling and/or major maintenance work shall be conducted at slip locations within Ballast Point. No alterations to boardwalks, docks, piers, etc. shall be made without the prior written approval of the A.R.B.

Owners of lots with soundside view may, under certain conditions, construct piers from their property into the adjacent waters (Roanoke Sound and Shallowbag Bay). In addition to obtaining the required permits from the applicable governmental agencies, any such construction must be approved in writing by the A.R.B. prior to beginning construction.

#### ARTICLE VII

**NUISANCES.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No lot is to be used for storage of materials, equipment, parking, etc., prior to house construction. No signs or bill boards shall be erected or maintained on the premises. Real estate signs are strictly prohibited. Street numbers attached to houses are to be consistent throughout the subdivision and are to be approved by A.R.B. Except during the initial period of construction, no building materials or equipment may be stored or regularly maintained on the premises. No business activity or trade of any kind whatsoever, which shall include, but not be limited to, the use of any residence as a doctor's office or other professional office of any kind, a fraternity house, a rooming house, a boarding house, an antique shop or gift shop, shall be carried on upon any lot. However, the prohibition in this Article against business activity shall not apply to lots remaining unsold and still owned by the Declarant.

#### ARTICLE VIII

**TEMPORARY STRUCTURES.** Except with the prior written consent of the A.R.B. no trailer, tent, shack, barn, or other outbuilding, other than a private garage for not more than three cars, shall be erected or placed on any lot in the subdivision. Except with the prior written consent of the A.R.B. no detached garage shall at any time be used for human habitation temporarily or permanently.

## ARTICLE IX

FENCES. No fence, wall, hedge, or mass planting shall be permitted to extend beyond the minimum building set-back line or within 20 feet of any street established herein except upon the prior written approval by the A.R.B. No chain link fence shall be used. All fences, walls or other barriers or structures shall be approved, in writing, by the A.R.B. prior to the commencement of construction thereof.

## ARTICLE X

ACCESSORY BUILDINGS. No accessory building of any nature whatsoever (including, but not limited to, detached garages, storage buildings, dog houses, greenhouses) shall be placed on any lot without the prior written approval of the A.R.B. The A.R.B. shall determine, in its sole discretion, the location, type and use of accessory buildings which may be permitted on any lot. No garage may face the street directly without the prior written approval of the A.R.B.

## ARTICLE XI

APPEARANCE, LANDSCAPING AND YARD MAINTENANCE. Each Owner shall keep his lot or building site free of undergrowth, dead trees, trash and rubbish and maintained so as to present a pleasing and tidy appearance. In the event an owner does not properly maintain his lot or building site as above provided, in the opinion of the A.R.B. then Declarant may have the required work done and the costs thus incurred shall be paid by the Owner. The Declarant reserves the right to approve all exterior paint colors, designs and all roofing material selection. The Declarant recommends earth-tone colors on all exteriors of structures or improvements. Declarant reserves the right to select one mail delivery box which must be used by the owners or occupants of all lots or units. No overhead service or utility lines shall be allowed except during periods of construction. No satellite dishes or other antennae shall be allowed on individual lots. No statuesques or other ornamentation shall be allowed without the prior written approval of the A.R.B.

It is the purpose of the landscaping and appearance review and approval provisions hereinabove to assure that the removal of existing trees is minimized and that the dwellings and improvements constructed are situated on the lot(s) in the most advantageous positions possible, with respect to other dwellings and improvements.

Maintenance of landscaping and lawns on all improved lots will be provided by the Pirate's Cove Homeowners' Association, Inc. The cost for this service will constitute an annual assessment against the lot owners and will be billed on a quarterly basis.

## ARTICLE XII

SEWER AND WATER. No sewage disposal system or individual well is permitted, as long as adequate services are provided, without the written consent of the Declarant. The Declarant has the absolute right to determine the manner in which sewage services are provided to the lots.

The Ballast Point Subdivision has been annexed by the Town of Manteo. In anticipation thereof, the Declarant and the Town of Manteo entered an agreement to assure that water and sewage services are provided to the lots. Each lot owner will be responsible for the costs of such water and sewage services to the individual lot(s), or shall share the costs thereof as common expenses of PCHA. The aforesaid agreement for water and sewage services obligates the Declarant to pay for a certain percentage of the total cost of a new sewer plant for the Town of Manteo.

Trash and garbage pickups by the Town of Manteo shall be by means of the use of dumpsters. No fish scraps are to be placed in dumpsters. A collection box at Pirates Cove Marina will be provided for placement of fish scraps.

The Declarant and or the PCHA shall provide street, sidewalk and street lighting maintenance for the subdivision, and such shall not be the responsibility of the Town of Manteo.

Any and all of the aforesaid services for utilities, garbage and trash pickup, and street, sidewalk, and street lighting maintenance services which shall be the responsibility and obligation of the Declarant may be transferred and conveyed to the PCHA, at Declarant's sole discretion.

## ARTICLE XIII

ANIMALS. No animals (including horses) or poultry of any kind, other than house pets shall be kept or allowed to remain on any lot in the subdivision.

## ARTICLE XIV

A non-exclusive easement and right is hereby given, granted and conveyed to each owner for access, ingress and egress to and from U.S. Highway 64/264 over Pirate's Way and over and through all roads, streets, and accesses constructed and maintained by the Declarant or by the Pirate's Cove Homeowners' Association, Inc. The Pirate's Cove Homeowners' Association, Inc. is obligated to accept and shall accept responsibility for maintaining the streets, roads, cul-de-sacs, other easements and accesses, sidewalks and street lights within this subdivision of single-family lots, the costs of which shall be borne on a pro rata basis by the lot owners in the subdivision along with other Class A members of the Pirate's Cove Homeowners' Association, Inc. The streets within the subdivision's boundaries are private and their use shall be limited to lot owners in the



subdivision and their agents, invitees and guests. The standard to which said roads and streets in said subdivision shall be maintained is the same standard and condition maintained by the Declarant as of the date hereof.

#### ARTICLE XV

Each owner in the Ballast Point Subdivision shall be a Class A member of and shall be entitled to all the rights and privileges of a Class A member of the Pirate's Cove Homeowners' Association, Inc. The Pirate's Cove Homeowners' Association, Inc. has been incorporated by the Declarant as a comprehensive property owners' association for the entire residential area of Pirate's Cove for the purpose of owning and maintaining the roads, streets, amenities, and other common properties in Pirate's Cove, including the single-family lot subdivision of Phase I affected by these covenants. As a member of the Pirate's Cove Homeowners' Association, Inc., each lot owner will enjoy the benefits of membership in the incorporated property owners' association, which shall include the rights and privileges of use and access to all recreational amenities and facilities within Pirate's Cove which shall be or has been dedicated by or granted and conveyed to the Pirate's Cove Homeowners' Association, Inc. by the Declarant or its successors. Among these rights and privileges shall be the use and enjoyment of a dock, pier, or boat slip, as available, assigned to a lot owner as a member in good standing of the Pirate's Cove Homeowners' Association, Inc. The terms and provisions of the By-Laws of the Pirate's Cove Homeowners' Association, Inc., which are attached hereto as Exhibit "B", are hereby incorporated by reference herein as if set forth word for word. Each lot owner takes title subject to said By-Laws, and in the event of a conflict between said By-Laws and this Declaration, the By-Laws of the Pirate's Cove Homeowners' Association, Inc. shall prevail.

#### ARTICLE XVI

**ASSESSMENTS.** Each and every owner of a lot, as a member of the Pirate's Cove Homeowners' Association, Inc., agrees to pay for each lot owned to said Association for the maintenance of the streets, roads and other common properties, amenities and facilities which said Association may now own or hereafter acquire, a sum equal to  $1/X$  ( $X$  equalling the total number of Class A votes in the Pirate's Cove Homeowners' Association, Inc.) of the common expenses of the Pirate's Cove Homeowners' Association, Inc. during that year, which shall be a recurring quarter-annual assessment due to the said Association, unless and until terminated pursuant to ARTICLE XVIII of this Declaration. Each owner shall pay said sums promptly when they become due but in any event within thirty (30) days after they become due. Upon failure of said lot owners to pay said sums when due, the amount due shall become a lien upon the lot or lots owned by such lot owners which lien may be claimed by notice and enforced by civil action in the nature of the enforcement of a laborer's and

materialmen's lien against real property pursuant to G.S. 44A-7, et seq. or, in the sole discretion of the Pirate's Cove Homeowners' Association, Inc., by civil action in the nature of the foreclosure of the lien of a deed of trust. In lieu of payment of said sums on lots owned by the Declarant, Roanoke Properties, or its successors, the Declarant may elect, in its sole discretion, to pay for actual operating expenses in excess of the collections of assessments herein provided for to the extent that said excess would be otherwise payable for lots then remaining unsold. In the event a court of competent jurisdiction shall rule that an owner(s) other than the Declarant is not liable for the common expenses and assessments herein provided for, such owner(s) shall pay, in lieu thereof, \$1,200.00 in annual assessments to the Pirate's Cove Homeowners' Association, Inc. Special assessments may be made in accordance with the By-Laws of the Pirate's Cove Homeowners' Association, Inc.

No lot owner may escape or absolve himself of liability for the common expense assessments, maintenance fees, and other assessments by abandonment or non-use of his lot, the common properties and recreational facilities of the Pirate's Cove Homeowners' Association, Inc. or by attempting maintenance by himself.

**DEVELOPMENT RIGHTS.** The Declarant hereby reserves unto itself, its successors and assigns non-exclusive easements and rights over and through Pirate's Way, the roads, streets, parking areas, docks, piers, boat slips and other areas in and adjoining the Ballast Point Subdivision, for the use, benefit and enjoyment of Roanoke Properties, its agents, employees, successors and assigns. Said easements are reserved for the purpose and intent of developing and improving lands and properties in Pirate's Cove according to its Master Plan and as it, in its sole discretion, may deem proper. Declarant reserves the right to create additional subdivisions or other planned communities in Pirate's Cove and to add such additional subdivisions or other planned communities to the Pirate's Cove Homeowners' Association, Inc. The plans of the Declarant are to build or develop approximately 650 residential units in the residential area of Pirate's Cove, which units may be condominium units, townhouse units, or lots in subdivisions, but no assurances are given that any or all of such units shall be built or developed. To the extent such residential units are completed, they will be added to the Pirate's Cove Homeowners' Association, Inc., and the owners thereof will be obligated to pay their pro rata share of the common expenses of said Association.

**DECLARANT CONTROL PERIOD.** Notwithstanding anything contained herein to the contrary, the Declarant, Roanoke Properties, its successors and assigns, shall have the right to appoint and designate the entire Board of Directors of the Pirate's Cove Homeowners' Association, Inc. until January 1, 2003, or until such earlier time as the Declarant surrenders its authority to so appoint and designate by an express Amendment to

these Bylaws executed by the Declarant and approved by the Board of Directors. Beginning with the first annual meeting of the membership of the Association after January 1, 2003, the Board of Directors shall be elected by the Class A members as set forth in the Bylaws. This provision shall control and prevail over any inconsistent term or provision otherwise contained in the Declaration. Any amendment, modification or alteration to this paragraph shall first be approved, in writing, by the unanimous consent of the Board of Directors of the Association.

RIGHTS OF PIRATE'S COVE HOMEOWNERS' ASSOCIATION, INC. The Pirate's Cove Homeowners' Association, Inc. is hereby granted the absolute and exclusive right to maintain, control and assign the docks, piers and boat slips throughout the residential area of Pirate's Cove, including those adjacent to the Ballast Point Subdivision. The docks, piers and boat slips adjacent to this subdivision are to be used by and assigned solely to the lot owners in the Ballast Point Subdivision. The Pirate's Cove Homeowners' Association, Inc. is hereby given the right and option, in its sole discretion, to charge and assess the lot owners in this subdivision alone for the costs of maintenance, upkeep and repair of the docks, piers and boat slips adjacent to Ballast Point Subdivision. This shall include the right to charge a recurring fee for water, electricity and other services provided to lot owners who, in fact, have been assigned an area of dockage. The assignment of dockage shall be in accordance with the provisions of the By-Laws of the Pirate's Cove Homeowners' Association, Inc.

No boat or other vessel or craft shall be docked or moored in the waterways and canals in Pirate's Cove so as to block or hinder the reasonable access, ingress and egress of others. No boat or other vessel or craft over fifteen feet (15') wide, measured at the "beam", shall be allowed in the residential area of Pirate's Cove, unless it shall first seek and obtain the prior written approval of the Board of Directors of the PCHA. The Board of Directors of the PCHA may by appropriate resolution, make such other and further rules and regulations concerning the use and enjoyment of the docks, piers, boatslips, canals and waterways in the residential area of Pirate's Cove.

The Pirate's Cove Homeowners' Association, Inc. is hereby granted the absolute right to appoint, designate and hire the managing entity who will provide management services for all property owners' associations in Pirate's Cove, including the Pirate's Cove Homeowners' Association, Inc., as set forth in its By-Laws.

#### ARTICLE XVII

PARKING. Adequate off-street parking shall be provided by the owner of each lot for the parking of motor vehicles owned by such owner, and owners of lots shall not be permitted to park their automobiles on the streets in the development. Owners of lots shall not be permitted to park boats, trailers, campers and

all other similar property on the streets in the subdivision and such property shall be parked in a garage or screened area approved by the A.R.B. concealing it from view.

#### ARTICLE XVIII

TERM. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time such covenants shall be automatically extended for a successive period of twenty (20) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

#### ARTICLE XIX

ENFORCEMENT. Enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

#### ARTICLE XX

SEVERABILITY. Invalidation of any one of these covenants or any part thereof by judgment or court order in no way affects any of the other provisions which shall remain in full force and effect, and the failure of any person or persons to take action to enforce the violation of any of these covenants and restrictions shall not be construed as a waiver of any enforcement rights and shall not prevent the enforcement of such covenant or covenants in the future.

#### ARTICLE XXI

AMENDMENTS. Declarant reserves the right to amend these restrictions from time to time as it may deem necessary. This Declaration may also be amended by an instrument approved by three-fourths (3/4ths) of all lot owners in the Ballast Point subdivision and two-thirds (2/3rds) of all Class A members of the Pirate's Cove Homeowners' Association, Inc. Said amendment shall be effective upon recordation in the Dare County Registry.

ARTICLE XXII

IN TESTIMONY WHEREOF, the said Declarant, a partnership has caused this instrument to be signed and sealed this the 24th day of November, 1993.



ROANOKE PROPERTIES LIMITED PARTNERSHIP, A North Carolina Limited Partnership

BY: GLENN ELLIOTT FUTRELL, INC., a North Carolina corporation, the managing general partner

By: [Signature] (SEAL)  
Glenn E. Futrell

ATTEST:

[Signature]  
(Asst.) Secretary

NORTH CAROLINA

DARE COUNTY

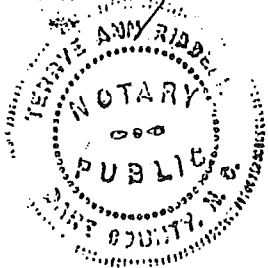
This 24th day of November, 1993, personally came before me, a Notary Public in and for the said County and State, Ben Goldstein, who, being by me duly sworn, says that he is secretary of Glenn Elliott Futrell, Inc., a corporation and the general partner of Roanoke Properties Limited Partnership, a North Carolina limited partnership, and that by authority duly given and as the act of said corporation, acting as general partner of the limited partnership, the foregoing instrument was signed by Glenn E. Futrell as president of said corporation on behalf of said limited partnership, sealed with its seal and attested by Ben Goldstein as its secretary.

WITNESS my hand and notarial seal this 24th day of November, 1993.

[Signature]  
Notary Public

My commission expires:

May 1, 1996



NORTH CAROLINA

DARE COUNTY

The foregoing certificates of George Ann Riddell,  
a notary public of Dare County, N.C.  
and \_\_\_\_\_, a notary public of \_\_\_\_\_,  
are certified to be correct.

Presented for registration this the 30<sup>th</sup> day of  
March, 199, at 4:35 o'clock P.m., and  
recorded in this office in Book 923, Page 0267.

W. Davis A. Drey  
Register of Deeds

By: \_\_\_\_\_  
Assistant/Deputy  
Register of Deeds

EXHIBIT A  
TO DECLARATION OF PROTECTIVE COVENANTS  
BALLAST POINT SUBDIVISION  
PIRATE'S COVE, PHASE I

Lots 1 through 52, inclusive, as shown on that certain subdivision plat entitled "PIRATE'S COVE, BALLAST POINT I, NAGS HEAD TOWNSHIP, DARE COUNTY, NORTH CAROLINA", dated 2/16/94, prepared by Bissell Professional Group, and recorded in Plat Cabinet C, Slides 190 through D-K, Dare County Public Registry, North Carolina.

specific purpose of performing any necessary repair work. Except as set forth above, the Association and its members shall not have general access rights to the pier, however, if any such piers are connected to common walkways, boardwalks or related improvements constructed on or adjacent to the lot, said walkways, and boardwalks shall remain the property of the Association.

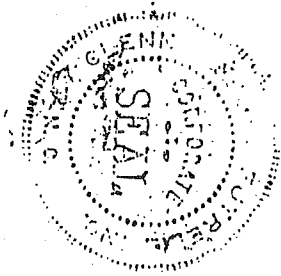
2. The Daniels, Wills, Hutchins and Gans enter into this Amendment to acknowledge their consent hereto as lot owners in Phase I, Ballast Point, Pirate's Cove, Dare County, North Carolina, and agree to abide by the Declaration as amended hereby.

3. Except as hereby amended, Article VI as well as all of the other Articles in the Declaration, and the protective covenants set forth therein, shall remain in full force and effect.

IN TESTIMONY WHEREOF, the Declarant, along with the Daniels, Wills, Hutchins and Gans, have caused this instrument to be signed and sealed as of this 5th day of July, 1994.

[SEE SIGNATURE PAGES ATTACHED HERETO]





ROANOKE PROPERTIES LIMITED PARTNERSHIP,  
a North Carolina Limited Partnership

BY: Glenn Elliott Futrell, Inc., a  
North Carolina corporation  
Managing General Partner

By: [Signature]  
Glenn E. Futrell, President

NORTH CAROLINA

DARE COUNTY

This 8<sup>th</sup> day of July, 1994, personally came before me, a Notary Public in and for the said County and State, GLENN ELLIOTT FUTRELL, president of GLENN ELLIOTT FUTRELL, INC., General Partner of ROANOKE PROPERTIES LIMITED PARTNERSHIP, a North Carolina limited partnership, and stated that the seal affixed to the foregoing instrument in writing is the official corporate seal of said corporation, and that the said writing was signed and sealed by him in behalf of said corporation by its authority duly given, and the said President acknowledged the said writing to be the act and deed of said corporation in its capacity as a general partner of said limited partnership and as the act and deed of said limited partnership.

WITNESS my hand and notarial seal, this 8<sup>th</sup> day of July, 1994.

[Signature: Sandra F. Rogers]  
Notary Public

My commission expires: 2-6-97



Stephen W. Daniels  
Stephen W. Daniels

Debra M. Daniels  
Debra M. Daniels

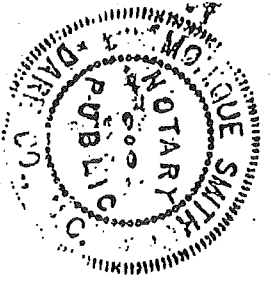
STATE OF North Carolina  
COUNTY/CITY OF Dare

I, the undersigned Notary Public, do hereby certify that Stephen W. Daniels and wife, Debra M. Daniels personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 14 day of July, 1994.

Monique Smith  
Notary Public

My commission expires: 3.18.98



*[Signature]*  
Theodore C. Wills, Jr.  
*[Signature]*  
Theodore C. Wills, Sr.

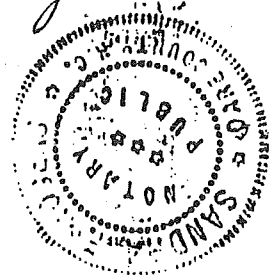
STATE OF North Carolina  
COUNTY/CITY OF Dare

I, the undersigned Notary Public, do hereby certify that Theodore C. Wills, Jr. and Theodore C. Wills, Sr. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 18<sup>th</sup> day of July, 1994.

*[Signature]*  
Notary Public

My commission expires: 2-6-97



BK 966 PG 0654

NORTH CAROLINA DARE COUNTY

The foregoing certificate(s) of Sandra F. Rogers Dare Co., N.C., Mangrove Smith, Dare Co., N.C.,  
Mangrove F. Carlson, the Commonwealth of Virginia, and Douglas W. MacAdam,  
the Commonwealth of Pennsylvania, all being Notaries Public  
~~to~~ 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  
By Lena S. Vestal Assistant Register of Deeds

BR 966 PG 0652

*Stephen R. Hutchins*  
\_\_\_\_\_  
Stephen R. Hutchins

*Teresa P. Hutchins*  
\_\_\_\_\_  
Teresa P. Hutchins

STATE OF Virginia  
COUNTY/CITY OF Henrico

I, the undersigned Notary Public, do hereby certify that Stephen R. Hutchins and Teresa P. Hutchins personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 13th day of July, 1994.

*Marquitta J. Carlson*  
*Notary Public*

*My Commission Expires: 4/30/98*



Christopher T. Gans  
Christopher T. Gans

Doris E. Gans  
Doris E. Gans

STATE OF Pennsylvania  
COUNTY/CITY OF Delaware

I, the undersigned Notary Public, do hereby certify that Christopher T. Gans and wife, Doris E. Gans personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 15<sup>th</sup> day of July, 1994.

[Signature]  
Notary Public

My commission expires: August 10, 1996

Notarial Seal  
Douglas W. MacAdam, Notary Public  
Marple Twp., Delaware County  
My Commission Expires Aug. 10, 1996  
Member, Pennsylvania Association of Notaries

