

B: 1778 P: 129

09/04/2008 10:54 AM

Doc Code: DECL

Barbara M. Gray, Register of Deeds Dare CO, NC

Doc Id: 6246456

Receipt #: 08-4116

Prepared by &

Return to:

Christopher L. Seawell

P. O. Box 339

Manteo, NC 27954

6246456 B: 1778 P: 129 Page 1 of 14 9/4/08 10:54 AM



NORTH CAROLINA
DARE COUNTY

DECLARATION OF RESTRICTIVE COVENANTS
THE FLATS SUBDIVISION

WHEREAS, Manteo Equity, LLC (hereinafter referred to as "Declarant"), is the fee simple owner of those certain lots or parcels of land located in the Town of Manteo, Nags Head Township, Dare County, North Carolina, and shown as Lots 1 through 23, inclusive, on a map or plat entitled "Subdivision Plat of The Flats", prepared by Seaboard Surveying & Planning, Inc., Registered Surveyors, dated July 16, 2007, recorded in Plat Cabinet H, Slides 28-30 in the office of the Register of Deeds of Dare County, North Carolina ("Plat");

WHEREAS, Declarant intends to develop said lots as shown on the aforesaid plat according to a common scheme with the objective that the restrictions herein imposed shall inure to the benefit of each and all of the purchasers of said lots, as shown on said plats; and it is the purpose of this declaration to declare and make known the covenants and restrictions ("Declaration") which shall apply to said lots, as shown on the aforesaid Plat;

NOW, THEREFORE, Declarant does by this instrument declare and make known that the following covenants and restrictions are to run with said lots as shown on the maps or plats hereinbefore designated and shall be binding upon its successors in interest.

ARTICLE I
RESIDENTIAL USE

A. All lots and lands shown shall be used exclusively for residential purposes (with the exception of any sales center, office, building or model homes constructed or used by the



Declarant or its agent). No lot or lands 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, or for the conducting of any business. Hotels, motels, rooming houses or boarding houses are specifically forbidden. No homes located on any lots shall be used for vacation rental as defined in the Vacation Rental Act, Chapter 42A of the North Carolina General Statutes. The rental of any dwelling within The Flats Subdivision shall be for a term of six (6) months or longer.

B. The owner residing on any lot may conduct business activities within the residence as long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the residence; (b) that business activity conforms to all zoning requirements for the lot; (c) that the business activity does not involve persons coming onto the lot who do not reside in the residence or door-to-door solicitation of residents of the subdivision; and (d) the business activity is consistent with the residential character of the subdivision and does not constitute a nuisance, a hazardous or offensive use or threaten the security or safety of the other residents of the subdivision, as may be determine in the sole discretion of the Declarant. The term "business" used in this section shall be construed to have the ordinary, generally accepted meaning, and shall include without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the providing of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is generated in full or part time, or such activity is intended or does generate a profit; or a license is required therefore.

C. The Declarant reserves the right to designate a lot within the Subdivision to be used as playground for the benefit of the Owners. If the Declarant so designates, the maintenance and upkeep of the playground shall be the responsibility of the Association. The Declarant, or its successors and assigns, may, in its sole discretion, terminate the continued use of said designated lot as a playground whereupon said lot shall be subject to the same terms and conditions of this Declaration as the remaining lots. In the event of such action, the Declarant shall be responsible for the removal of all improvements or playground equipment located on said lot.

ARTICLE II ARCHITECTURAL REVIEW

A. No building, garage, accessory building or other structure, site work or clearing preparatory to construction shall be begun, altered, added to, maintained or reconstructed on any lot until the plans and specifications for such work have been

reviewed and approved by Declarant and/or its designated Architectural Review Board (ARB). Before commencing such review, the lot owner shall submit to Declarant a complete set of plans and specifications including but not limited to: a site plan, a foundation plan, a floor plan or plans, the four directional elevations, and a schedule of proposed exterior colors and materials. As part of the plan package submitted by a lot owner for approval, there shall be included a comprehensive landscape plan. No change shall be made from such approval plans and specifications, nor shall subsequent alterations be caused to the site or buildings without the express approval of the Declarant or its ARB. Declarant or its ARB may approve the plans, including landscaping plans, sighting or specifications conditionally, or it may refuse approval upon any grounds, including purely aesthetic considerations, which in its sole discretion shall appear warranted to protect the beauty and harmony of the The Flats development.

B. Each lot owner shall provide screening from public view, approved in writing by Declarant or its ARB, for fuel tanks, service yards, air conditioning units, clothes lines, water tanks, rubbish storage receptacles, or for any other permanent facility which Declarant or its ARB, in its sole opinion, shall require to preserve the beauty and harmony of the development.

C. The approval of plans and specifications shall also include the approval of driveways. No driveways shall be approved unless same is to be constructed of concrete, asphalt, brick or turf stone. No lot shall access the streets within the Subdivision via more than one driveway.

D. If any application for approval shall include any structure proposed to be situated on a piling-type foundation, the Declarant or its ARB specifically reserves the right as part of the approval process to set a limit for the amount of exposure above ground allowed for any such pilings, and to require screening and masking of all exposed pilings with solid panels or open lattice.

E. No building shall be erected, altered, placed, or permitted to remain on any numbered lot other than a detached single family dwelling not to exceed two and one half stories in height and a private garage or accessory building in keeping with the architectural design of the dwelling.

F. Declarant reserves unto itself the right to determine the exact location of any building, garage, accessory building or other structure to be located on the lot. It is the intent of Declarant in this site location process to attempt to encourage in all cases a blend of structure and terrain that will least impact the neighbors, insofar as bulk, mass, height, and vista interruption. Vertically oriented structures will be allowed to the extent that location within the topography will lessen their

impact on the locale, and horizontally oriented structures will be required by Declarant or its ARB when, in its sole discretion, such would enhance the aesthetic quality of the neighborhood, or in the event that neighboring vistas would otherwise be adversely affected.

G. In no event shall the location of a residence, garage, accessory building or other structure be approved in violation of these covenants. All such structures placed on the property described on the above plat, shall comply with the minimum building set back lines as shown on the recorded Plat.

H. Within 30 days after receipt of the plans and all other required information, the Declarant or its ARB shall notify the owner in writing as to whether the plans have been approved. Unless a response is given by the Declarant or its ARB within 30 days after all required information has been received, the plans shall be deemed approved. The response may be an approval, a denial, an approval with conditions or request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the 30 day time period for further response shall only commence upon receipt of the requested additional information. If approval with conditions is granted, and the construction then begins, the conditions shall be deemed accepted by the owner and the conditions imposed shall become fully a part of the approved plans.

ARTICLE III CONSTRUCTION RESTRICTIONS

A. Notwithstanding the foregoing right to approve buildings plans, the following minimum standards shall apply to Buildings on the Lots in the Subdivision:

B. No one-story dwelling shall have less than 1,000 square feet heated living area. No two-story dwelling shall have less than 1,200 square feet heated living area.

C. The exterior Building materials shall extend to grade level, and no building shall have an unfinished exposed foundation.

D. Prior to commencement of construction of improvements, or clearing of any lot, other than by hand or other method approved by the Declarant or its ARB, the owner shall place a temporary or permanent driveway to provide entry to the lot from the road. A culvert shall be placed under this driveway and in line with the existing road swales. The culvert shall be a minimum of 15 inches in diameter, at least as long as the width of the permanent driveway, and set to ditch grade by a registered surveyor or engineer.

E. Modular homes may be permitted within the Subdivision, provided that their design, specifications and appearance are specifically approved by the Architectural Review Board under Article II.

F. Roof pitch 8:12 minimum where practical with architectural shingles.

G. All porches shall be stained to coordinate the house. No unfinished wood shall be exposed to exterior.

H. Brick, concrete fiberboard or lattice skirting shall be required around house foundation, porches, decks and out buildings.

I. Pools to be in ground with no more than 2.0' above ground.

J. Each building and structure erected upon said lot shall be completed within 12 months after commencing construction, except where completion is, in the opinion of Declarant or its ARB, impossible or would result in severe hardship to the lot owner or the builder due to causes not in his or their control.

K. All lawns must be either seeded or sodded for the entire front area, both sides and rear of the residence, said seeding or sodding to be done within six (6) months or next immediate growing season after erection of the residence on any Lot, whichever first occurs.

ARTICLE IV WALLS AND FENCES

Walls and fences ornamental in design, may be erected but must be approved by the ARB. No fences shall be constructed on the lots exceeding four feet in height above ground level, except a fence surrounding a pool may exceed the minimum height but only to the extent necessary to comply with any required governmental regulation. All fences shall be wood or vinyl and must be white in appearance.

ARTICLE V OCCUPANCY

A. No residence erected upon any lot shall be occupied in any manner prior to completion of construction and the connection of permanent utilities.

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

ARTICLE VI
TEMPORARY STRUCTURES

No structure of a temporary character, including, but not limited to, trailer of any kind, tent, shack, garage, barn, mobile home, or other outbuilding shall be used or allowed on any lot or land at any time either temporarily or permanently except such temporary structures as may be necessary for the storage of materials by or for the convenience of workmen during the erection of the residences upon said lots or land. No temporary structure of any kind including those hereinabove set out shall be used on any lot or land at any time as a residence either temporarily or permanently.

ARTICLE VII
PARKING

No trucks, trailers, passenger cars or other vehicles may be habitually parked on the common roads area. On each lot shall be provided an improved, non-porous surface for the parking of vehicles off the road. The storage of travel trailers, campers, trucks, boats and boat trailers shall be off the common roads and in such a manner so as not to constitute a visual nuisance. Campers, travel trailers, trucks and other vehicles of that nature shall not be lived in while parked on a lot.

ARTICLE VIII
EXTERIOR APPEARANCE

A. All personal property of the owners, including yard furniture, firewood, bicycles, motorbikes, beach furniture, toys and trashcans, must be stored or kept inside each building or in exterior receptacles approved by the Declarant or its ARB. No such items may be kept in the yard areas of the lots, it being the intent of this subsection to maintain an aesthetically pleasing subdivision free of exterior storage and display of unsightly clutter to insure the continued beauty of the subdivision.

B. All utilities shall be placed underground, and the erection of any exposed antennas shall be done only with the approval of Declarant or its ARB. Approval for any such antennas will be in writing to Declarant with sufficient drawings, measurements and information accompanying so as to allow a full understanding of the visual impact of said antenna.

ARTICLE IX
EASEMENTS

A. There is reserved unto the Declarant, its successors and assigns, an easement for the purpose of drainage and installation and maintenance of utilities, including cable television, over and upon the ten feet of each lot which abuts a street or roadway, and along the side and rear property lines in conformity with the setbacks as shown on the recorded plat.

B. All wells installed upon said property shall be in accord with the rules and regulations of the North Carolina Department of Health and shall be located upon said lands in positions approved by the Declarant or its ARB and said Health department. No outside toilets will be permitted under any circumstances.

C. All owners of lots and lands subject to these restrictions shall have an easement of right of way for the purpose of ingress, egress and ordinary enjoyment across any of those lands dedicated or set aside as access for all property owners.

D. There is reserved for the Declarant, its successors and assigns, the Association and for the benefit and enjoyment of Lot Owners, an easement along the sidewalks on the Lots within the Subdivision as shown on the Plat.

ARTICLE X
SUBDIVISION OF LOTS

A. None of the Lots shall at any time be subdivided. No more than one residence shall be erected on any one lot; however, when one owner acquires two or more adjoining lots, then in that event the adjoining one or more lots may be used as one building site and the side lot lines and easements referred to herein shall apply to the outside perimeter line of the combined lots, except that no buildings or structure or any part thereof shall be erected or maintained on any combined lots nearer the side boundary lines of such lot than twenty (20) feet.

B. No lot(s) shall be used for the dedication of a roadway or used as an easement for adjoining tract or tracts of land, including other subdivisions without the consent of Declarant, its successors and assigns.

ARTICLE XI
SIGNS

There shall be no signs, billboard or advertising structures of any nature whatsoever placed on any lots or lands, except for one "for sale" or "for rent" sign. Declarant shall not be prevented from erecting such signs as may be deemed necessary to the operation of the subdivision in the normal conduct of its business, provided that any signs so erected shall be within the applicable limits as defined by the guidelines applicable to all other lot owners in the subdivision.

ARTICLE XII
PETS

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats or any household

pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

ARTICLE XIII
VARIANCES

Declarant may from time to time grant to the Owner or Owners of lots within the Subdivision a waiver or variance from the provisions of the Declaration. The conditions under which such a waiver or variance may be granted shall be in the total discretion of the Declarant. It is understood that the existence that this power does not create a right in any Homeowner or Lot Owner to require such action by the Declarant and the decision of the Declarant on a request for waiver or variance shall be final. The express purpose of the power as described in the paragraph in to enable the Declarant to alleviate hardships created by the terms of this Declaration under circumstances which are beyond control or fault of the parties and would create irreparable harm or unnecessary hardship without such action; or under conditions where title to the property in question is clouded, encumbered or detrimentally effected by the existence of conditions which cannot otherwise be corrected. Even when conditions as described herein exist so that waiver or variance appears appropriate, granting such waiver or variance shall remain completely within the discretion of the Declarant.

ARTICLE XIV
THE FLATS PROPERTY OWNERS' ASSOCIATION

A. For the express purpose of owning and maintaining the roads, streets and other common properties in the subdivision as shown on the aforesaid plat recorded in Plat Cabinet H, Slides 28-30, Dare County Registry, and for the benefit of the lot owners, Declarant has caused to be formed a property owners association known as The Flats Property Owners Association, Inc. (Association), of which each lot owner in the subdivision, shall be a member. Declarant reserves the right to assign its rights pursuant to these covenants, including the right to approve plans and specifications, and the right to enforce these covenants and restrictions, to said Association at such time as Declarant, in its sole discretion, determines that such Association is prepared to assume the obligations imposed by these covenants. Such membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

B. During any Period of Declarant Control, Declarant shall have the right to designate and select all of the persons who shall serve as members of the Board of Directors ("Board") of the Association. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Board which Declarant is not entitled to designate or select shall be elected by the members of the Association.

C. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board and to replace such person or persons with another person or other persons to act and serve in the place of any member or members of the Board so removed for the remainder of the unexpired term of any member or members of the Board so removed.

D. "Period of Declarant Control" shall mean and refer to the period of time commencing on when the Declaration is recorded in the office of the Register of Deeds of Dare County and continuing until the earlier of: (i) such time as Declarant ceases to own at least two of the Lots shown on the Plat; or (ii) ten years from the date this Declaration is recorded in the office of the Register of Deeds of Dare County, North Carolina.

E. A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, a majority of the Board, or by Lot Owners having twenty-five percent (25%) of the votes in the Association. Not less than ten (10) or more than sixty (60) days in advance of any meeting, the Secretary shall cause notice to be hand-delivered or sent prepaid by United States Mail to the last known mailing address of the Owner on the records of the Association. The notice of any meeting must state the time and place of the meeting and the terms on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a director or officer.

F. A quorum shall be deemed present for the purposes of any regular or special meeting of the Association when ten percent (10%) of the Owners are represented either in person or by proxy.

G. Officers of the Association charged with the day to day operation of the Association and who shall be authorized to carry out the Association's business and execute documents on behalf of the Association, shall consist of a President and a Secretary/Treasurer, each appointed by the Declarant during the Period of Declarant Control and thereafter elected by a majority vote of the Board.

ARTICLE XV COVENANT FOR PAYMENT OF ASSESSMENTS

A. Each Owner, other than the Declarant, of any lot, by acceptance of a deed therefore, whether or not it shall be so referenced in any such deed or other conveyance, shall be deemed

to and does hereby covenant and agree to all the covenants, conditions and restrictions of this Declaration and to pay to the Association the following:

i. regular annual assessments or charges as herein or in the Bylaws provided;

ii. special assessments for capital improvements or maintenance; and

iii. costs and expenses, including reasonable attorney's fees, incurred by the Association incidental to the enforcement of any Rules and Regulations, collection of assessments or collection of damages or charges arising under the Bylaws. The annual and special assessments and any liquidated damages or summary charges as herein or in the Bylaws provided, together with such interest thereon and costs of collection thereof as herein provided, including attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot or Dwelling Unit against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, including attorney's fees shall also be the personal obligation of the person or persons jointly and severally, who is/are the Owner(s) of such lot at the time the assessment becomes due.

iv. Upon acquisition of record title to a lot by the first purchaser thereof (other than Declarant), the purchaser shall pay the sum of \$250.00 to the Association. This assessment shall be used for all purposes permitted under the terms of this Declaration.

B. The assessments levied by the Association shall be exclusively to promote the recreation, health, security, safety and welfare of the residents of The Flats and, in particular, for:

i. the improvement, maintenance, and replacement of the Common Areas (which are defined as sidewalks, roads, a playground lot, as long as same is used as a playground, drainage areas within the Subdivision and any other Common Areas as shown on the recorded Plat) including, without limitation, any dedicated amenities.

ii. Any Lot designated by the Declarant as a playground for the benefit of the lot owners within The Flats Subdivision and occupants of dwellings located on lots within the Subdivision, unless the Declarant terminates said use as provided in this Declaration.

iii. The cost of maintenance of all drainage easements, as Declarant determines appropriate within the Subdivision and as referenced in Article IX(A), unless the expense of drainage

easements is caused by the act of a lot owner, in which event said expense shall be the responsibility of said lot owner.

iv. maintenance of exteriors of Dwelling Units and related improvements on Lots pursuant to Section 4.05 of the Declaration.

iii. establishment of capital replacement reserves, and

iv. for the acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of The Flats Subdivision, the procurement and maintenance of insurance related to The Flats Subdivision, its facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association if necessary, and such other requirements as may be necessary to perform all of the aforesaid functions and purposes.

C. There will be no difference between the amount assessed against improved or unimproved lots.

D. The initial maximum regular annual assessment for lots is \$200.00 and is based on the present amenities and is subject to be increased in the event of additional amenities being added to The Flats. The Board shall determine, by a majority vote, whether to increase the regular annual assessment and whether to levy a supplemental assessment if it is determined that the regular annual assessment funds collected cannot fund the Board's essential functions.

E. In addition to the regular annual assessments authorized hereunder, the Association may levy in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any improvement located upon the common areas including the necessary fixtures and personal property related thereto, provided that any such assessments shall have the consent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this; provided, however, during the Period of Declarant Control, Declarant must also consent to such action. A special assessment shall be fixed at a uniform rate for all lots and may be collected on a monthly, quarterly or semi-annual basis, as determined by members approving of such assessments.

F. The regular annual assessments provided for herein shall be paid either quarterly, semiannually, or annually as determined by the Board. Payment of such shall be due for each lot upon the receipt of title of the lot from Declarant and on each due date thereafter, or, if title is received from a third party, upon the next scheduled due date. The first regular annual assessment shall be pro-rated based on the number of days remaining in the fiscal year. The due date of any special assessment under this Declaration shall be determined by the

Board in the resolution authorizing such assessment.

G. At least thirty (30) days in advance of each annual assessment period the Board shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. Within thirty (30) days of the adoption of any proposed budget, the Board shall provide to all of the Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting the Owners of a majority of the Lots reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

H. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate from time to time established by Association not to exceed eighteen percent (18) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of a mortgage or deed of trust on real estate under power of sale, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Area or abandonment of his lot nor shall damage to or destruction of any improvements on any lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

I. During the Period of Declarant Control, the Declarant can either elect to remit assessments on unsold lots or unsold dwelling units or in the alternative, the Declarant can remit, on an annual basis, that sum which equals any deficiency between operating expenses and receipts of the Association exclusive of reserves for the streets up to a maximum of that amount equal to what the Declarant's obligation would be for assessments on unsold lots.

J. There shall be no assessment on any lot as long as same shall be designated by the Declarant as a playground.

ARTICLE XV
MISCELLANEOUS

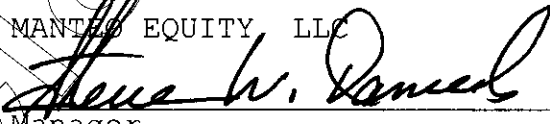
A. Enforcement of these covenants, restrictions and declarations may be by Declarant, its successors and assigns, or any owner of property subject to these covenants either for equitable restraint against the violation thereof, or at law for damages by virtue of any such violation and the invalidation of any one or more of the conditions and restrictions set out herein shall in no way affect any other of such provisions, all of which shall remain in full force and effect.

B. The foregoing conditions, reservations, declarations, covenants and easements shall run with the land and be binding upon all purchasers of lands and lots in said properties covered by these restrictions, and upon all persons or entities claiming under them through the 30th day of June, 2028, at which time the said conditions, reservations, easements, declarations and covenants shall automatically be extended for further successive periods of 10 years each, unless by vote of the then owners of record of a majority of the lots shown on the plat above referred to, it is agreed on or before such expiration date to change the said conditions, reservations, easements, restrictions, covenants, declarations in whole or in part.

C. Notwithstanding any of the above provisions to the contrary, the Declarant reserves the right to amend these covenants, as it deems appropriate without the consent of any owners, for a period of two (2) years from the recording of this Declaration.

MANTIS EQUITY, LLC

BY:


Manager

(SEAL)



NORTH CAROLINA
DARE COUNTY

I, the undersigned Notary Public of the County and State aforesaid, certify that Stephen W. Daniels personally appeared before me this day and acknowledged that he is Manager of Manteo Equity, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation he signed the foregoing instrument in its name on its behalf as its act and deed.

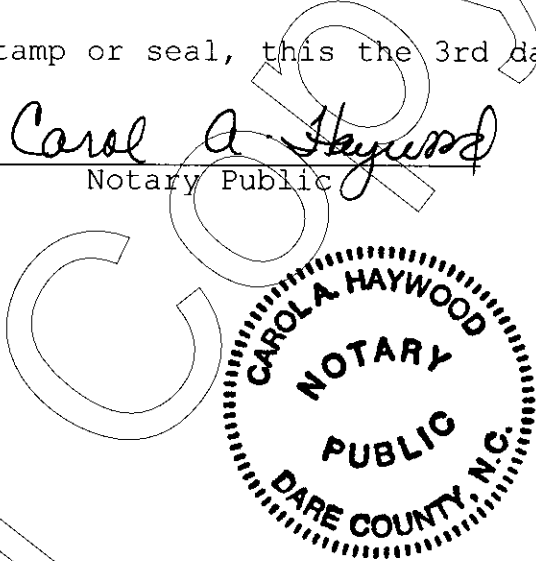
Witness my hand and official stamp or seal, this the 3rd day of September, 2008.

Carola A. Hayward

Notary Public

My commission expires:

August 31, 2011



Unofficial Copy