

DECLARATION OF PROTECTIVE COVENANTS  
FOR

**KELLAM ESTATES**

THIS DECLARATION OF PROTECTIVE COVENANTS, made this 1st day of August, 1988 by KELLAM-FRANCE, INC., a North Carolina Corporation, hereinafter called "Declarant";

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of certain real property located on Roanoke Island, Nags Head Township, Dare County, North Carolina and more particularly described in Article I herein and said property being hereinafter referred to as "Kellam Estates" and "the Subdivision" herein; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in Kellam Estates and for the maintenance of the Common Areas and, to this end, desires to subject the real property described in Article I to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is, and are, for the benefit of said real property and each owner thereof; and

WHEREAS, Declarant wishes to insure that any improvements to the property be in conformance with a standard of architectural guidelines for the purpose of protecting the value and desirability of Kellam Estates and has made provisions for an Architectural Standards Committee which will administer architectural guidelines for Kellam Estates as more particularly set forth in Article VIII; and

WHEREAS, Declarant has caused to be incorporated Kellam Estates Homeowners Association, Inc., a North Carolina Non-Profit Corporation (hereinafter referred to as "Association") for the purpose of administering and enforcing the Covenants hereinafter created;

NOW, THEREFORE, the Declarant hereby declares all that property described in Section 1.01 to be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to this Declaration of Protective Covenants, easements, liens and charges, all of which are declared and agreed to be in furtherance of enhancing and protecting the value, desirability, and attractiveness of Kellam Estates and any part thereof, and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the described Kellam Estates or any part thereof.

ARTICLE I.

STATEMENT OF SUBMISSION

Section 1.01 Submission of Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is shown on that Plat entitled "Plat of Kellam Estates, Roanoke Island, Nags Head Township, Dare County, North Carolina" prepared by W. M. Meekins & Assoc., Inc., Land Surveyors and Planners and recorded in Plat Cabinet \_\_\_\_, Slide \_\_\_\_, in the Office of the Register of Deeds of Dare County, North Carolina.

## ARTICLE II.

### DEFINITIONS

Section 2.01 **Definitions.** When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Architectural Standards Committee" shall mean and refer to the committee who shall be initially appointed by the Declarant and later subject to appointments by the Association's Board of Directors to approve exterior and structural improvements, additions, and changes within Kellam Estates as provided in Article VIII.

(b) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Kellam Estates Homeowners Association, Inc.

(c) "Assessment" shall mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

(d) "Association" shall mean and refer to Kellam Estates Homeowners Association, Inc., a North Carolina non-profit corporation.

(e) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(f) "By-Laws of the Association" or the "By-Laws" shall mean and refer to those By-Laws of Kellam Estates Homeowners Association, Inc. which govern the administration and operation of the Association, as the same may be amended from time to time.

(g) "Common Areas" shall mean and refer to those areas of land shown on the aforementioned Subdivision Plat and all the property is labeled "Common Areas" to include all roads and that swimming pool (note need to make designation here).

(h) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

(i) "Declarant" shall mean Kellam-France, Inc., a North Carolina Corporation and any successor in interest.

(j) "Declarant Control Period" shall mean the period commencing on the date of the filing of the aforementioned Subdivision Plat in the Office of the Register of Deeds of Dare County, North Carolina and continuing until the earlier of: (1) the date three (3) years after the date of the first conveyance of a Lot in Kellam Estates or the date Declarant has conveyed seventy-five percent (75%) of the total number of Lots within the Subdivision to owners other than the Declarant during the Declarant Control Period.

(k) "Declaration" shall mean and refer to this Declaration of Covenants and all amendments thereof filed for record in the Office of the Register of Deeds of Dare County, North Carolina.

(l) "Dwelling" shall mean and refer to any improved property for a single family residential occupancy use located within the Subdivision.

(m) "Improvements" shall mean and refer to any additions to a Lot including a dwelling, garage, carports, porches, terraces, balconies, decks, patios, courtyards and any other construction which has been approved by the Architectural Standards Committee of Kellam Estates.

(n) "Living Area" shall mean and refer to enclosed heated covered areas within a Dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics, and basements.

(o) "Lot" shall mean and refer to any parcel of land shown upon the aforereferenced recorded Subdivision Plat with the exception of the common areas as heretofore defined.

(p) "Member" shall mean and refer to all those owners who are members of the Association as provided hereinafter in Article IV.

(q) "Mobile Home" shall mean and refer to a modular unit, including double wide and triple wide units, built on a chassis, designed to be used as a dwelling, with or without a permanent foundation.

(r) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

### ARTICLE III.

#### PROPERTY RIGHTS

Section 3.01 **General.** Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas and Amenities as established hereunder, which shall include, but not be limited to, membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his Lot.

Section 3.02 **Owner's Easement of Enjoyment.** Subject to the provisions of this Declaration and the rules and regulations established by the Board of Directors in accordance with the By-Laws and the terms hereof, every Owner, his family, tenants, and guests shall have a non-exclusive right, privilege, and easement of use and enjoyment in and to the Common Areas and Amenities, such easement to be appurtenant to and to pass and run with title to each Lot, subject to the provisions of this Declaration.

Section 3.03 **Amenities.** Subject to the terms and provisions of this Declaration and any rules and regulations which may be established by that committee appointed by the Boards of Directors of Kellam Estates and Raleigh Woods, every owner and his family, tenants, and guests shall have the non-exclusive right, privilege, and easement of access to and the use and enjoyment of pool privileges to that pool facility situated within the Southeast corner of Kellam Estates.

Section 3.04 **Easements for Declarant.** During the Declarant Control Period, Declarant shall have an alienable and transferable right and easement on, over,

through, under, and across the Common Areas and Amenities for the purpose of constructing any improvements in and to the Lots and for installing, maintaining, repairing, and replacing such other improvements to the Subdivision as are contemplated by this Declaration, provided in no event shall Declarant have the obligation to do any of the foregoing.

Section 3.05 Easements for Utilities and Drainage. The Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric, water, sewer and telephone systems, cable television service, and conduits for the purpose of bringing public services to Subdivision, on, in or over an area within 10 feet of each Lot line fronting on a street or where a Lot line abuts a right-of-way or boundary line, five feet along the side lines of each Lot. Declarant reserves unto itself, its successors and assigns, perpetual, alienable and releasable easements within the Subdivision and the right on, over and under the ground to cut drainways for surface water and make any grading of the soil whenever and wherever such action may appear to Declarant to be necessary to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

Section 3.06 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner.

Section 3.07 Maintenance Easement. There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, the right to enter upon any Lot, such entry to be made by personnel with tractors or other suitable devices, for the purposes of mowing, removing, clearing, cutting or pruning underbrush, weeds or unsightly growth for the purpose of building or repairing any land contour or other earth work which in opinion of the Declarant or its agents detracts from or is necessary to maintain the overall beauty, ecology, setting and safety of the property. Such entrance shall not be deemed as trespass. Declarant, the Association and their successors and/or assigns may likewise enter upon any Lot to remove any trash which is collected without such entrance and removal being deemed as trespass. The provisions of this paragraph shall not be construed as an obligation on the part of the Declarant and/or the Association to undertake any of the foregoing.

Section 3.08 Environmental Easement. There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all Lots for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

Section 3.09 Common Areas. Declarant shall retain the legal title to the Common Areas until such time as in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision to the contrary herein, Declarant hereby covenants, for itself, its successors and assigns to convey the Common Areas to the Association not later than three (3) years from the date of the first sale of a Lot by the Declarants or when seventy-five percent (75%) of the Lots are sold by the Declarant, whichever occurs first. Title to the swimming pool shall be conveyed at such time as, in

the joint opinion of the Declarant of Kellam Estates and Raleigh Woods that the Associations' of Kellam Estates and Raleigh Woods are able to maintain the same but, notwithstanding any provision to the contrary herein, the Declarant hereby covenants, that title to the swimming pool shall be conveyed to the joint ownership of the Associations' of Kellam Estates and Raleigh Woods no later than five (5) years from the date of the recordation of the Plat of Kellam Estates. The Association shall be obligated to accept conveyance of the swimming pool in accordance with these provisions.

Section 3.10 Title to Raleigh Woods Drive. Notwithstanding the provisions of Section 3.09 herein, title to Raleigh Woods Drive remains vested in Kellam-France, Inc. subject to that Easement Agreement recorded in Book 545 at Page 323 of the Dare County Registry and the dedication of Raleigh Woods Drive as a Common Area for purposes of ingress and egress to all Lot Owners within Kellam Estates and Raleigh Woods. Pursuant to the provisions of the aforereferenced Easement Agreement, maintenance of Raleigh Woods Drive shall be the sole responsibility of Raleigh Woods Homeowners Association, Inc.

#### ARTICLE IV.

##### MEMBERSHIP

Section 4.01 Membership. Every person or entity who is a record owner of a fee simple interest in any Lot is subject by this Declaration to assessment by the Association and shall be a member of the Association; provided, however, that any such person or entity holding such interest merely as a security for the performance of an obligation shall not be a Member. The requirement of membership shall apply to any mortgagee or trustee beneficiary acquiring title by foreclosure or otherwise pursuant to the mortgage or deed of trust instrument.

Section 4.02 Voting Rights. The Association shall have one class of voting membership and Members shall be entitled to one vote for each Lot in which they hold an interest required for membership by Section 4.01 of this Article. When more than one person or entity holds such an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine and such persons shall designate one (1) person to vote for their Lot, but in no event shall more than one vote be cast with respect to any such Lot.

Section 4.03 Control of the Board of Directors of the Association. During the Declarant Control Period, the Declarant shall have the right to appoint two-thirds (2/3) of the Board of Directors.

#### ARTICLE V.

##### MAINTENANCE

Section 5.01 Responsibilities of Owners. Each Lot Owner shall be responsible for all maintenance and repair of their Lot together with all other improvements thereon or therein and all lawns, landscaping of grounds on and within the Lot shall be the responsibility of the owner of such Lot. Each owner shall be responsible for maintaining its Lot in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all improvements and other structures and all lawns, trees, shrubs, hedges, grass, walkways, driveways and other landscaping. As provided in Section 5.02(b) hereof, each owner shall be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such owner but which responsibility such owner fails or refuses to discharge. No owner shall decorate, change, or otherwise alter the appearance of any portion of the exterior of any improvements within a Lot, except when traditional seasonal ornamental decorations are appropriate and which are in the opinion

of the Architectural Standards Committee appropriate, unless such decorations, changes or alterations are first approved in writing by the Architectural Standards Committee as provided in Article VIII hereof or do any work which, in the reasonable opinion of the Architectural Standards Committee would jeopardize the soundness and safety of the Subdivision, reduce the value thereof, or impair any easement thereto without in every such case obtaining the written approval of the Architectural Standards Committee.

Section 5.02 Association's Responsibility. Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas and Amenities including the swimming pool. No diminution or abatement of assessments shall be claimed or allowed by reason of alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

In the event that the Declarant or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, shall give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. In such event, the Owner shall have thirty (30) days within which to complete the same in a good workmanlike manner or in the event that such maintenance, cleaning, repairs, or replacement is not capable of completion within thirty (30) days, to commence said maintenance, cleaning, repairs, or replacement and diligently proceed to complete the same in a good workmanlike manner within a reasonable time frame. In the event of the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to provide) any such maintenance, cleaning, repairs, or replacement, the sole costs and expense of which shall be added to and become a part of the assessment to which the Owner and his Lot shall be subject and shall become a lien against such Lot. In the event that the Declarant undertakes such maintenance, cleaning, repairs, or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

## ARTICLE VI.

### ASSESSMENTS

Section 6.01 Purpose of Assessments. The assessments for Common Expenses provided for herein shall be used for the general purposes of maintenance of roads and improvements and maintaining, promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Kellam Estates, and maintaining the Subdivision and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

Section 6.02 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) annual assessments, such assessments to be

established and collected as provided in Section 6.03 hereof, (b) special assessments, such assessments to be established and collected as provided in Section 6.04 hereof, (c) individual or specific assessments against any Lot established pursuant to the terms of this Declaration. Any such assessments, together with late charges, simple interest at the rate of eighteen per cent (18%) per annum, and court costs and reasonable attorneys' fees incurred to enforce or collect such assessments, shall be a lien on the Lot pursuant to the provisions of Section 6.07 herein. In the event of co-ownership of any Lot, all of such Co-Owners shall be jointly and severally liable for the entire amount of such assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, provided that unless otherwise provided by the Board, the annual assessments shall be paid in one lump sum.

Section 6.03 Computation of Annual Assessments. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The Board shall cause the budget and the proposed total of the annual assessments to be levied against Lots for the following year to be delivered to each Owner at least fifteen (15) days prior to such meeting. The total annual assessments shall be divided among the Lots equally, so that each Lot shall be subject to equal annual assessments. In such event, the Association's budget shall be accordingly revised by the Board, without the necessity of approval by the Owners, to include Common Expenses and assessments related to such additional Lots. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Declarant, for so long as Declarant has the authority to appoint and remove directors and officers of the Association, or (ii) a vote of a majority of the votes of the Owners who are voting in person or by proxy at such meeting. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Section 6.04 hereof. The Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

- (a) management fees and expenses of administration, including legal and accounting fees;
- (b) utility charges for any utilities serving the Common Areas and Amenities;
- (c) the cost of any policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, Officers and Directors liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;
- (d) the expenses of maintenance, operation, and repair of those portions of the Common Areas and swimming pool which are the responsibility of the Association under the provisions of this Declaration;
- (e) the expenses of the Architectural Standards Committee which are not defrayed by any plan review charges;
- (f) ad valorem real and personal property taxes assessed and levied against the Common Areas and swimming pool;
- (g) such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots; and

(h) the establishment and maintenance of a reasonable reserve fund or funds (A) for maintenance, repair, and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be maintained, repaired, or replaced on a periodic basis, (B) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (C) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

Section 6.04 Special Assessments. In addition to the annual assessments authorized above, the Association, acting through its Board of Directors, may levy, in any assessment year, special assessments for Common Expenses, applicable to that year only, provided that except as otherwise permitted in the By-laws of the Association, any such assessment shall be approved by (i) Declarant during the Declarant Control Period and (ii) by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 6.06 hereof. The Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such special assessments are to be prorated among the Lots equally as provided with respect to annual assessments.

Section 6.05 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests, or invitees of any Owner shall be specially assessed against such Owners and their respective Lots. The individual assessments provided for in this Section 6.05 shall be levied by the Board of Directors and the amount and due date of such assessment so levied by the Board shall be as specified by the Board.

Section 6.06 Notice of Meeting and Quorum. Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under Sections 6.03 and 6.04 hereof, shall be sent to all members not less than fifteen (15) days nor more than forty five (45) days in advance of such meetings. With respect to annual meetings, the presence of members or proxies entitled to cast over forty percent (40%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be the presence in person or by proxy of members having one-fourth (1/4) of the total votes of the Association. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6.07 Liens. All sums assessed against any Lot pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be a lien upon Lot, which lien may be claimed by notice and enforced by civil action in the nature of and enforcement of laborer's and materialmen's lien against real property pursuant to the provisions of Chapter 44(A) of the North Carolina General Statutes or in the discretion of the Association by civil action in the nature of the foreclosure of the lien.

Section 6.08 Effect of Nonpayment; Remedies of the Association. Any assessments of an Owner or any portions thereof which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of eighteen percent (18%) per annum. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association may as the Board shall determine institute suit to collect such amounts or enforce its lien pursuant to the provisions of Section 6.07 herein. No Owner may waive or otherwise escape liability for



the assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot, and an Owner shall remain personally liable for assessments, interest, and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot.

## ARTICLE VII.

### ADMINISTRATION

Section 7.01 Common Areas. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the management and control of the Common Areas.

Section 7.02 Duties and Powers. The duties and powers of the Association shall be those set forth in this Declaration, the By-laws of the Association and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association.

Section 7.03 Rules and Regulations. The Associations of Kellam Estates and Raleigh Woods shall be responsible for appointing a joint committee for the purpose of having said committee adopt rules and regulations governing the use of the swimming pool which rules and regulations shall be enforced by the Association.

## ARTICLE VIII.

### ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

Section 8.01 Purpose. In order to preserve the natural setting and beauty of Kellam Estates, to establish and preserve a harmonious and aesthetically pleasing design for Kellam Estates, and to protect and promote the value of Kellam Estates, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article VIII. Every grantee of any interest in Kellam Estates, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article VIII.

#### Section 8.02 Architectural Standards Committee.

(a) Membership: The Committee shall be composed of three (3) people who need not be members of the Association appointed by the Board. A majority of the Committee may designate a representative to act for it. In the event of death, resignation or removal by the Board of any member of the Committee, the board shall have full authority to designate the successor otherwise approved by the Association. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. The Association shall keep or cause to be kept a list of the names of the persons who form the Committee and list of the names of any designated representatives of the Committee and such list shall be available to any Owner.

(b) Procedure: At least thirty (30) days prior to the proposed commencement of any construction, the plans shall be submitted to the Committee. The Committee's approval, disapproval or waiver as required in these covenants shall be in writing and the decision of a majority of the Committee in case of any disagreement among Committee members as to the approval, disapproval or waiver by the Committee shall be controlling. In the event the Committee or its designated representatives fail to approve or disapprove within thirty (30) days after plans have been received by it, approval of the Committee will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with. Further, in the event any construction is commenced on any Lot without submission to the Committee of

the plans with respect thereto, and no action or suit is instituted against the Owner of such Lot by the Association or any owner of any other Lot constituting a portion of the Subdivision within ninety (90) days after the foundation of any building being constructed on any such Lot is completed, then, and in any such event, approval by the Committee will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with.

(c) Committee: Within three (3) years from the date of the first sale of the Lot by the Declarant or when seventy-five percent (75%) of the Lots have been sold by the Declarant, whichever occurs first, at least a majority of the members of the Committee shall be composed of Owners other than the Declarant or a representative of the Declarant.

Section 8.03 Approval of Plans. No building, wall, driveway, swimming pool, tennis court, 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 the Architectural Standards Committee (hereinafter referred to as "the Committee"). Before commencing such review, a Lot Owner shall submit to the Committee three (3) completed sets of plans and specifications, including, but not limited to: foundation plan, floor plan or plans, the four directional elevations, a schedule of proposed exterior colors and material, shingle colors, grade and weight, plan showing driveway, parking, septic tank and drainfield, and proposed commencement date of construction and expected completion of improvement. The Committee shall have the absolute and exclusive right to refuse to approve any such plans and specifications which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons which, in the sole and uncontrolled discretion of the Committee, shall be deemed sufficient. If construction of any improvement required to be approved shall not have been begun before the expiration of six months following approval, said approval shall be void and of no effect. In such event, the plans of such improvement shall be resubmitted to the Committee for reconsideration and the Committee may, in its discretion either confirm its earlier approval of plans or disapprove.

Section 8.04 Approval Not a Guarantee. No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, nor the Architectural Standards Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article VIII, nor any defects in construction undertaken pursuant to such plans and specifications.

Section 8.05 Building Restrictions. No Dwelling or other structure shall be constructed on a Lot which has a height exceeding thirty five (35) feet above the elevation of the average grade of the Lot. All Dwellings shall have a minimum of 1,400 square feet of "living area" for any one story or one and 1/2 story Dwelling and a minimum of 1,550 square feet of "living area" for any two story Dwelling. No building, including porches, eaves, steps and similar fixtures shall be located on any Lot within twenty-five (25) feet of the front line nor closer than ten (10) feet from the side lines thereof, nor closer than twenty (20) feet from the rear property line. Side setbacks on any street shall be fifteen (15) feet.

Section 8.06 Use of Lots and Dwellings. Each Lot and dwelling shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. No Lot shall be used for access to any adjoining Lot or other property, nor for the dedication of a roadway or used as an easement for an adjoining tract or tracts

of land, or other Subdivision. When an Owner acquires two or more Lots then, and in that event, the adjoining one or more Lots may be used as one (1) building site and the side Lot lines and easements referred to therein shall apply to the outside perimeter line of the combined Lots.

Section 8.07 Exterior Appearance. Any fences must first be approved by the Architectural Standards Committee. However, no metal or chain-link fences shall be permitted and no fence shall be permitted between a single family residence or dwelling and the street line. Any unenclosed garages or carports must be adequately screened from street views. Further, no foil or other reflective material shall be used on any windows for sunscreens, blinds, shades or other purposes nor shall any window-mounted heating or air-conditioning units be permitted.

The Architectural Standards Committee shall determine the standards and issue guidelines for the implementation thereof for the location, material, color and design of all mail and newspaper boxes and the manner which they shall be identified.

Each Owner shall provide receptacles for garbage in accordance with the standards established by the Architectural Standards Committee.

Section 8.08 Signs. No signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any improvements without the express written permission of the Architectural Standards Committee. There shall be permitted one (1) sign of not more than six (6) square feet advertising the property for sale. Such sign shall be located adjacent to a driveway, ten (10) feet back on the property line and not more than three (3) feet in height, including the sign and stand. During construction, a builder's sign may be affixed to the dwelling but it may not be more than six (6) square feet and must be removed before occupancy by the Owners. All "For Rent" signs shall be of the design, size, material and color as approved by the Architectural Standards Committee.

Section 8.09 Antennas. No television antenna, radio receiver, or other similar device shall be attached to or installed on any portion of Subdivision, unless contained entirely within the interior of a building or other structure, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot, which may unreasonably interfere with the reception of television or radio signals within the Subdivision.

Section 8.10 Animals and Pets. Animals, livestock or poultry of any kind shall not be raised, bred or kept on any Lot except dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and provided that they are under the control of their owner at all times.

Section 8.11 Nuisances. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Subdivision, nor shall any nuisance or odors be permitted to exist or operate upon or arise from within the Subdivision, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Subdivision. Noxious or offensive activities shall not be carried on in any Lot.

Section 8.12 Prohibited Structures. No structure of a temporary character, house trailer of any kind, tent, shack, garage, mobile home, barn or other outbuilding shall be used, placed or allowed on any Lot or building site of 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 and contractors during the erection of residences upon said Lots. No temporary structure of any kind, including those hereinabove set out shall be used on any Lot or site at any time as a residence

either temporary or permanently. "Modular Home" or similar types of dwellings shall not be constructed or placed upon any Lot or building site.

Section 8.13 Motor Vehicles, Trailers, Boats, Etc. Each Owner shall provide for parking of automobiles off the streets and roads within the Subdivision prior to occupancy of any Dwellings owned by such Owner. There shall be no outside storage or parking upon any Lot, or within any portion of the Common Areas of any: mobile home, trailer, motor home, tractor, truck (other than pickup trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices. No Owners or other occupants of any portion of the Subdivision shall repair or restore any vehicle of any kind upon or within any Lot, dwelling, or within any portion of the Common Areas, except (i) within enclosed garages or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

Section 8:14 Landscaping Approval. To preserve the aesthetic appearance of the Subdivision, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by any Owner, other than Declarant, unless and until the plans therefore have been submitted to and approved in writing by the Architectural Standards Committee. The provisions of Section 8.03 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Such plans shall include a calculation of the ratio of the area to be covered by grass lawns versus the area to be left in a natural state, and the Architectural Standards Committee shall be entitled to promulgate standards with respect to such ratios. All of the landscaping of Lots and Dwellings must be completed within one hundred twenty (120) days of occupancy or substantial completion of the Dwelling, whichever date shall first occur.

Section 8.15 Driveways. Prior to the commencement of construction of improvements or clearing of any Lot, other than by hand, the Owner shall place a temporary clay or permanent clay and gravel or concrete driveway to provide entry to the Lot from the road.

Section 8.16 Parking. Parking on the traveled streets within the Subdivision shall be prohibited at all times. Each Lot Owner shall provide off-street parking space for his family's use and the use of their guests by providing a turnaround large enough to park two cars, in addition to the driveway. All construction vehicles are to be parked off of the traveled streets and on the shoulder of the road or in the driveway of the Lot at all times during construction.

Section 8.17 Foundations. The foundation of all single family residences or dwellings on any Lot or building site shall be constructed of brick only on all exterior walls. All single family residences and dwellings must have some exterior appurtenances on either the front or side elevations, such as covered stoops, porches, decks or breezeways. These exterior appurtenances must be a minimum of forty (40) square feet. Foundations by pilings are expressly prohibited.

## ARTICLE IX.

### VARIANCE

Section 9.01 Variance. The Board of Directors of the Association 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 Board of Directors of the Association. It is understood that the existence of this power does not

create a right in any Homeowner or Lot Owner to such action by the Board and the decision of the Board on request for waiver or variance shall be final. The expressed purpose of the power as described in the paragraph is to enable the Board of Directors 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 board of Directors.

## ARTICLE X.

### GENERAL PROVISIONS

Section 10.01 Duration. All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, Declarant for a period of thirty (30) years from the date of this Declaration, after which time, all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a two-thirds majority of the then owners of the Lots has been recorded, agreeing to change said covenants in whole or in part, provided, however, that no such agreement to change shall be effective unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 10.02 Notices. Any notice required to be sent to owner, under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing. Notice to any one of the Owners, if title to a Lot is held by more than one, shall constitute notice to all Owners of a Lot.

Section 10.03 Enforcement. In the event of any violation or breach of any of the restrictions contained herein by any property owner or agent of such owner, Declarant, its successors or assigns, or the Owners of Lots within the Subdivision, or any of them, jointly or severally, shall have the right to proceed in law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach of any of the restrictions set out above, but before litigation may be instituted ten (10) days written notice of such violation shall be given to the Owner or his agent. The failure to enforce any right, reservation or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction contained in this Declaration shall in no way affect any of the other restrictions, but they and each of them shall remain in full force and affect.

Section 10.04 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive.

Section 10.05 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be

prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 10.06 Notice of Sale, Lease, or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot or Dwelling, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

Section 10.07 No Trespass. Whenever the Association, Declarant, the Architectural Standards Committee, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Subdivision, the entering thereon and the taking of such action shall not be deemed to be trespass.

Section 10.08 Amendment of Declaration. During the Declarant Control Period, Declarant reserves the right to bring other property belonging to Declarant under these protective covenants and also reserves the right to alter, amend, modify, change or eliminate any of the foregoing restrictions by filing a supplementary declaration setting forth that purpose without any necessary joinder. Following the Declarant Control Period, this Declaration may be amended by a majority vote of the Owners of the Subdivision. If any amendment to the Declaration creates an inconsistency in the By-Laws of the Association to the extent such inconsistency exists, the Declaration shall control. No amendment to this Declaration shall be effective until recorded in the Office of the Register of Deeds of Dare County, North Carolina.

IN WITNESS WHEREOF, the duly authorized partners of the undersigned Declarant have executed this Declaration of Protective Covenants under seal, this the 18 day of August, 1988.

DECLARANT

KELLAM-FRANCE, INC.,  
A North Carolina Corporation

By: Michael France (SEAL)  
Michael France, President

ATTEST:

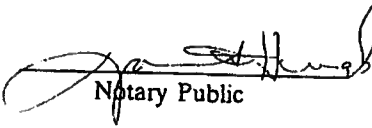
By: Violet Kellam  
Violet Kellam, Secretary

[CORPORATE SEAL]

NORTH CAROLINA  
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Violet Kellam, personally came before me this day and acknowledged that she is Secretary of Kellam-France, Inc., a North Carolina Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its Corporate Seal and Attested by her, as its Secretary.

WITNESS my hand and official stamp or seal, this the 16 day of August, 1988.

8/21/88  
My Commission Expires  Notary Public

