

DECLARATION OF PROTECTIVE COVENANTS AND CONDITIONS

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SeaPines Subdivision, Duck
Atlantic Township, Dare County, North CarolinaDOERRIC A. EAY
REGISTER OF DEEDS
DARE COUNTY, N.C.

APPLICABILITY

These declarations shall be applicable to Residential Lots 1 through 59 and to Parcels "A" and "B," SeaPines Subdivision, in the Village of Duck, Atlantic Township, Dare County, North Carolina, as described on the maps and plats prepared for Kitty Hawk Land Company, Ocean Beach, Inc., and South Ocean Beach, Inc., jointly as Declarant, and hereinafter referred to as KHL, in January 1990, by Bill Robbins & Associates, Registered Land Surveyors; the said maps being duly recorded in the Dare County Registry as follows:

SeaPines

Plat Cabinet C Slides 117 C & D

ARTICLE I: PURPOSE

It is the purpose of these declarations to insure the best use and the most appropriate development and improvement of each building site thereof; to protect the owners of building sites against such improper use of surrounding building sites 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 insure the highest and best development of said property; to encourage and secure the erection of attractive homes and buildings thereon, with appropriate locations thereof on building sites; to prevent haphazard and inharmonious improvement of building sites; to secure free spaces between structures; and in general, to provide adequately for a high type and quality of improvement of the said property; and to preserve, as fully as possible, the natural beauty of the common areas as well as the individual building sites.

ARTICLE II: GENERAL COVENANTS

Section 1. Residential Use - Lots 1 through 59. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one single family residence and any accessory buildings approved in accordance with the terms of Section 5 of this Article. No business or business activity may be carried out on these lots at any time, provided however, that nothing herein shall preclude KHL, its subsidiaries, affiliates, and employees from using all or part of any dwellings or buildings owned by them for the purpose of carrying on business directly related to the development and/or management of this Subdivision.

Section 2. Commercial Use - Parcels "A" and "B". The Parcels "A" and "B" shall be limited to the uses listed below, and in addition no building shall be erected, altered, placed, or permitted to remain on either parcel unless approved in accordance with the terms of Section 5 of this Article.

Uses:

1. Offices of the following type:
 - a. business
 - b. financial
 - c. governmental
 - d. medical and professional
2. Retail stores of the following type:
 - a. books
 - b. cameras
 - c. candy
 - d. clothing
 - e. craft goods
 - f. dry goods
 - g. drugs
 - h. flowers

- i. gifts
- j. hardware
- k. hobby goods
- l. jewelry
- m. leather goods
- n. magazines
- o. musical instruments
- p. notions
- q. sporting goods
- r. toys
- s. food stores
- t. antiques
- u. household appliances

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- 3. Service establishments of the following type:
 - a. barber and beauty shops
 - b. churches
 - c. dry cleaning and laundry pickup stations
 - d. restaurants
 - e. shoe repair
 - f. bed and breakfast inns

4. Single-family dwellings, duplexes and multifamily dwellings not to exceed six units per acre.

5. County owned or leased facilities.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the property, nor shall anything be done which may be or may become a nuisance or annoyance to residents within the property.

Section 4. Subdivision of Lots or Parcels. No lot or parcel shall be subdivided, or its boundary lines changed, except with the prior written consent of KHL; however, it shall be permissible to combine two or more adjacent lots or parcels which have a common ownership into one tract of land for purposes of constructing a building which would be authorized on such lots or parcels individually. In the event of such a combination, the setback requirements relating to the common boundary between the properties will not prohibit building upon that boundary so long as setback requirements relating to the outside borders of the tract are met. This provision does not reduce or remove any other restriction which may exist as a result of this Declaration.

Section 5. Approval of Plans. No building or other structure, site work or clearing preparatory to construction shall be begun, altered, added to, maintained or reconstructed on any lot or parcel until the plans and specifications for such work have been reviewed and approved by KHL. Before commencing such review, the owner shall submit to KHL three (3) complete sets of plans and specifications including but not limited to: the site plan, the foundation plan, the floor plan or plans, the four directional elevations clearly showing notations as to height complying with the language that follows in this section, and a schedule of proposed exterior colors and materials. No change shall be made from such approved plans and specifications, nor shall subsequent alterations be caused to the site or building without the express approval of KHL. KHL may approve the plans, siting or specifications outright, conditionally, or 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 property.

If for whatever reason any application for approval shall include any structure proposed to be situated on a piling-type foundation, KHL 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, open lattice or plant materials, or a combination thereof. In no event will more than 8 feet of open piling exposure be allowed.

In no event shall KHL, in the exercise of its discretion, approve on Residential Lots 1 through 59 plans for any single family main residence with a total area of less than 1,700 square feet, excluding garages and accessory buildings, and with a heated living area, excluding porches, steps and other appurtenant parts of the main residence, of less than 1,200

square feet. There is no minimum requirement as to square footage of buildings on Parcels "A" and "B".

Additionally, on Lots 1 through 59, excluding the Exceptions detailed below, in no event shall KHL approve any plans in which the building at the top plate of the uppermost habitable floor exceeds a height of 27 feet.

Habitable is defined as having rooms or spaces and having been wired, plumbed, equipped with cooking appliances, and furnished (or any combination of three or more of the foregoing) which is utilized or capable of providing for two or more of the following functions:

1. Preparation, cooking and consumption of food;
2. Sleeping;
3. Human waste disposal;
4. Bathing or showering.

Height is defined as the vertical distance measured from the top plate to the finished grade or original grade at the base of the structure, whichever is greater. In cases where the finished grade or original grade varies at the corners of a building, the height shall be determined by using the average grade at the corners of the structure.

The top plate of any non-habitable area above the uppermost habitable floor, such as a cupola, tower, dome or other enclosed space or architectural feature, may exceed the above height limit by a maximum of 8 feet so long as no part of the house exceeds 40 feet in height.

Exceptions:

1. On the following selected lots 12, 13, 14, 15, 16, 17, 38, 41, 42, 43, 46 and 47, the height allowance to the top plate of the uppermost habitable floor may be extended to as much as 31 feet, so long as no more than 8 feet of piling exposure is created (as per the limitations to be found earlier in this section of this Declaration), and the top plate of any non-habitable area above the uppermost habitable floor, such as a cupola, tower, dome, or other enclosed space or architectural feature may exceed the above height limit by a maximum of 8 feet so long as no part of the house exceeds 48 feet in height.

2. On Parcels "A" and "B," for any commercial use, the maximum height allowed for the building will be 35 feet measured as per the definition of "height" above. In the event the owner should opt for residential use of the parcel as allowed above in Section 2, Subsection 4 of this Article, then in that event the height allowance will be as per the residential limitations herein on the "non-exception" lots.

It is the intent of the above height limitations to encourage the construction of buildings with two, but in some cases to allow for three, full habitable floors above the piling tops, while yet encouraging distinctive architecture by allowing for the additional height requirements of steep roofs, split levels, and special architectural features above those habitable floors. In any event, these allowances for height will remain subject to review and approval as a part of the overall plan approval procedure as set out above.

Where construction of any improvement required to be approved shall not have been begun before the expiration of 6 months following approval, said approval shall become void and of no effect. The plans for such improvement shall be resubmitted to KHL for reconsideration, and KHL may, in its discretion, either confirm its earlier approval of the plans or disapprove them.

Section 6. Building Location. KHL reserves unto itself the right to determine the exact location of any building or other structure to be located on a lot or parcel. It will be the intent of KHL 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.

In no event shall KHL, in the exercise of its discretion, approve the location of a residence or building within 25 feet of the front line of said lot or parcel, within 10 feet of the sidelines of said lot or parcel and within 20 feet of the rear lines thereof.

Section 7. Completion of Building. Each building and structure erected upon said lot or parcel shall be completed within 18 months after commencing construction, except where completion is, in the opinion of KHL, impossible or would result in severe hardship to the owner or the builder due to causes not in his or their control.

Section 8. Utilities. All utilities shall be placed underground, and the erection of any exposed antennas shall be done only with the approval of KHL. Application for approval for any such antennas will be in writing to KHL with sufficient drawings, measurements and information accompanying so as to allow KHL to fully understand the visual impact of said antenna.

Section 9. Screening. Garbage Receptacles. Each lot or parcel owner shall provide screening from public view, approved in writing by KHL, for fuel tanks, service yards, air conditioning units, clothes lines, water tanks, rubbish storage receptacles, or for any other permanent facility which KHL determines, in its sole opinion, needs screening in order to preserve the beauty and harmony of the development.

All personal property of the owners, such as yard furniture, firewood, bicycles, motor bikes, beach furniture, toys or trash cans must be stored or kept inside each building or in exterior receptacles approved by KHL. No such items may be kept in the yard areas of the lots or parcels, it being the intent of this subsection to maintain an aesthetically pleasing Subdivision free of exterior storage and display of unsightly clutter and thus ensure the continued beauty and neatness of the property.

Containers for garbage to be picked up by the regular municipal collection service are to be kept at the house or building and moved out to streetside no sooner than 12 hours prior to collection time and moved back no later than 12 hours after collection.

Section 10. Temporary Structures. No temporary structure, such as a trailer, tent or shack, shall be placed upon any lot or parcel before, during, or after completion of construction of such buildings and structures as have been approved by KHL, except for such shelters as are normally used by construction contractors during the period of construction, and such shelters may not be used as residences while on the property.

Section 11. Vegetation. No existing vegetation or sand dunes shall be disturbed at any time without the express written consent of KHL. KHL shall require written proposals for the restabilization of any such disturbed area. Any vegetation disturbed during construction shall be repaired to the satisfaction of KHL prior to owner applying for an occupancy permit from Dare County or the appropriate municipal body. This shall not prevent KHL from engaging in such earth moving, clearing, mowing, and pruning activities as are necessary to affect the overall plan of development.

Section 12. Sewage Disposal. Prior to commencing construction of any residence or commercial building, applicable permits for sewage disposal shall be obtained, with the location of such proposed facility to be acceptable to KHL as part of the site plan approval process found in Section 5 of this Article. Governmental approval of such systems shall be obtained after completion, with a copy of approval being forwarded to KHL prior to occupancy of the residence.

Section 13. Attachment to Utilities. No permanent public or private utilities may be connected to any residence until KHL has verified general compliance with these covenants, and with the plans and specifications submitted and approved pursuant to Section 5 of this Article. Such verification is to be in writing.

Section 14. Water Distribution System. If a community water distribution system is in operation, or shall come into operation, in any area to which this Declaration is applicable, water service to each lot to which the system is available shall be obtained only from the said water distribution system.

If no such system is in operation at the time when approval of plans is obtained pursuant to the terms of Section 5 of this Article, then private wells conforming to all applicable governmental regulations may be constructed on the lots to supply water until tap-on to the water distribution system is possible. In addition, private wells may, with the approval of KHL, be located on the lots or parcels to supplement the water distribution system for such purposes as lawn and garden care.

KHL reserves the right to require its approval of the location of all such wells as part of the site plan approval requirement of Section 5 of this Article. KHL's approval shall be contingent on its corequisite approval of the location of the septic tank, grease trap, junction box and nitrification lines on the lot, and, in the interest of community health, KHL reserves the right to require standards more stringent than those required by governmental agencies, based solely on its evaluation of the property as it may relate to other properties. In no way does this reservation of right create any responsibility on behalf of KHL to make such evaluations or approvals.

Section 15. Occupancy. No residence or building erected upon any lot or parcel shall be occupied in any manner prior to completion of construction and the connection of permanent utilities.

Section 16. Signs in the Residential Lot Areas. KHL reserves the right to determine the location, size, material and color of any "for sale" or "for rent" signs to be displayed on Residential Lots 1 through 59 and to issue general guidelines to aid in the implementation of this provision. Any other signs on the residential lots are prohibited unless approved in writing by KHL. KHL 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 acceptable limits as defined by the Dare County Zoning Ordinance.

KHL also reserves the right, in the three areas denoted as sign easement as shown on the plat on Lots 1, 30, and 59, to erect and maintain landscaped entry signs identifying the Subdivision. Such signs, if installed, will be unlighted, not to exceed 40 inches in height or 72 inches in width, and will be of a design and color scheme so as not to be in conflict with the general aesthetics of the Subdivision.

Section 17. Mail and Delivery Boxes. KHL shall determine the standards and issue guidelines thereof for the location, material, color and design for all mail and newspaper boxes and manner in which they shall be identified. All residential lot owners must display the County assigned street address on their mail boxes, or other appurtenance, as per the specifications of the Dare County Street Address Ordinance.

Section 18. Pets. No animals of any kind shall be kept, raised or bred on any lot or parcel, except a reasonable number of the usual domestic pets such as dogs or cats, provided that such domestic pets are not kept, raised or bred for commercial purposes and provided that they are under the control of their owner at all times.

Section 19. Parking and Vehicle Storage. On each lot or parcel shall be provided an improved, non-porous surface for the parking of at least 2 vehicles off the road. The storage of travel trailers, campers, trucks and self-propelled mobile homes shall be in such a manner so as not to constitute a visual nuisance. Campers, travel trailers, trucks, self-propelled mobile homes, and other vehicles of that nature shall not be lived in while parked on a lot. In addition, in the event of commercial use of Parcels "A" or "B", the parcel owner will comply with the parking requirements of the Dare County Zoning Ordinance for the Village Commercial (VC) district.

Section 20. Nuisances. It shall be the responsibility of each lot or parcel owner to maintain the exterior of his residence or commercial building and the surrounding grounds of his lot or parcel in a clean, tidy and safe manner. No lot or parcel shall be used in whole or in part for the storage of anything which might cause such lot or parcel to appear cluttered, unclean or obnoxious to the eye; nor shall any substance, thing or material be kept on any lot that might emit foul or obnoxious odors or noises, or create conditions that will or may disturb the serenity, safety, or comfort of the occupants of surrounding properties. No noxious or offensive activity shall be carried on upon any lot or parcel, nor shall anything be done thereon tending to create a nuisance to the neighborhood.

Section 21. Entry. Each owner shall keep his lot or parcel cleared of unsightly underbrush, weeds or debris. If said owner shall permit such to exist on his property and fail to remove the same within 30 days after being requested to do so by KHL, KHL reserves for itself and its agents the right to enter upon the lot for the purpose of cleaning, clearing or cutting the grass or underbrush, or removing debris which in KHL's opinion, detracts from the overall beauty or natural character of the neighborhood or adversely affects the safety or health of the residents; and such entrance shall not be deemed a trespass. The expenses of entry and removal shall be the personal debt of the owner and shall also constitute a lien upon the land until paid. The provisions of this Section shall not be construed as an obligation on the part of KHL to provide such services.

Section 22. Easements for Utilities and Drainage. KHL on behalf of itself and/or such utility companies as may service the Subdivision from time to time, reserves a perpetual right, privilege and easement 15 feet wide on the front, 10 feet wide on the rear, and 5 feet wide on the side lot or parcel lines to construct, maintain and operate in, upon, across and through said easements in a proper and workmanlike manner, electric, telephone, gas, sewer, water, drainage and other conveniences together with the right at all times to enter upon the said easement with men and equipment for the purpose of inspecting, altering and repairing the same. KHL reserves the right to maintain or otherwise keep clear any obstructions that may adversely affect the proper maintenance and operation of the various utility systems and further reserves a perpetual right to enter upon any lot for the purpose of construction or maintaining emergency drainageways for the benefit, health, and safety of the neighboring residents. These restrictions, however, shall not be considered an obligation of KHL to provide or maintain any such utilities, services or easements.

Section 23. Driveway Culverts. Each owner, when making a driveway connection, to the street or to a cul-de-sac, will provide a suitable drainage culvert so as to allow for unimpeded water movement along the existing roadway swale, and will maintain that culvert at all times in such a way that it does not become an eyesore or disturb the desired drainage patterns in the swale system.

Section 24. Stormwater Management Improvements. The SeaPines Property Owners Association, after such time as the Declarant no longer owns any lots or parcels in the Subdivision, will be responsible for maintenance of the stormwater management swales, channels, and check dams; and to see that each owner installs and maintains his driveway culvert as per Section 23 above. Such maintenance is to include removal of sediments within the swales and channels, restabilization of the swales and channels as needed, check dam repairs, flushing of driveway culverts and upkeep of the vegetative cover on a periodical, as-required basis.

Section 25. Residential Lot Coverage. In compliance with the Dare County Zoning Ordinance limitation for residential zones, no more than 30 percent of any residential lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, stone, slate or similar materials. This covenant also insures continued compliance with stormwater runoff rules adopted by the State of North Carolina and thus may be enforced by the State of North Carolina.

Section 26. Timeshare and Fractional Interest Prohibition. No lot or parcel owner(s) shall sell or offer for sale timeshare or fractioned interests in any lots or parcels and/or improvements thereon in SeaPines Subdivision. The term "timeshare" shall have the same meaning as is defined by N.C.G.S. Section 93A-41(a).

ARTICLE III: COMMON ELEMENTS

Section 1. Alterations. KHL, in fulfilling its general plan for improvement of the Subdivision, hereby reserves with respect to those areas denoted as private roads and "commons," the right to change and alter such roads and common elements and to install or alter utility and drainage facilities and such other facilities as are necessary or desirable for implementation of its plan of development and for this reservation of common elements. The right to change or alter the use of such property is reserved exclusively for the benefit of KHL.

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Section 2. Reservation for Private Uses. The reservation of streets and common elements is made for the private use of the members of the SeaPines Property Owners Association, Inc., their families and guests, and not for the general public.

ARTICLE IV: PROPERTY OWNERS' ASSOCIATION

Every person who is record owner of a lot or parcel within this Subdivision or within any other property which may be annexed as set forth in Article VI of these Covenants, shall be a member of the SeaPines Property Owners Association, Inc., (hereinafter "Association"). Ownership of such property shall be the sole qualification for such membership, and membership will entitle the owner to one vote per lot or parcel. Membership shall be appurtenant to and may not be separated from ownership of any lot or parcel which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership. As used herein, "Owner" shall include one or more persons or entities who are record fee simple owners of a lot or parcel, but not mortgagees. The one vote assigned to each lot or parcel may be cast by the majority of those persons or entities who are owners of said lot or parcel.

The right of use and enjoyment of the common amenities and facilities of the SeaPines Property Owners Association, Inc., shall be limited to the lot and parcel owners in SeaPines Subdivision, their families, lessees, agents, invitees, and guests. The Board of Directors of said Association may, by majority vote, make such rules and regulations concerning the use and enjoyment of the common amenities and facilities as they may, in their sole discretion, deem proper. Said rules and regulations shall include, but not be limited to, limiting the use and enjoyment of the common amenities and facilities to a reasonable number of guests and invitees of any owner(s), and providing for the removal of any persons on the premises of SeaPines Subdivision, who, purporting to be guests or invitees of an owner, are not accompanied by the owner, his family or lessee.

ARTICLE V: COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot or parcel owned within the Subdivision after January 1, 1993, hereby covenants; and every other owner of any lot or parcel by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

1. Annual Assessments or charges.
2. Special Assessments for capital improvements and such other assessments as shall be fixed, established, and collected from time to time as hereinafter provided.

The Annual and Special Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot or parcel (and improvements) against which each such assessment is made. Each such assessment, together with such interest and reasonable attorney's fees and costs of collection, shall also be the personal obligation of the person who was the owner of the lot or parcel at the time the assessment fell due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them and then only with the consent of the Association. All assessments shall be shared equally by the owners of each lot or parcel.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents and the Subdivision, enforcing these covenants and the rules of the Association, and improving and maintaining the common properties and private roads. Each and every owner of a lot or parcel, as a member of the Association, agrees to pay to the Association for each lot or parcel owned this assessment in order to provide for the above-mentioned purposes. In the event a court of competent jurisdiction shall rule that an owner other than the Declarant is not liable for the common expenses and assessments herein provided, such owner shall pay, in lieu thereof, \$1,200.00 per year per lot or parcel as a substitute in annual assessments to the Association.

Section 3. Amount of Assessment.

1. Initial assessment. In the year 1990, the initial annual assessment shall be Four Hundred Dollars (\$400.00) per lot or parcel, prorated as per Section 8 of this Article below, payable quarterly, and will remain at that level annually unless increased as per 2. or 3. below.

2. Increase by Association. From and after December 31, 1990, the maximum annual assessment may be increased effective January 1 of each year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the percentage increase reflected in the U.S. City Average, Consumer Price Index - United States and Selected Areas for Urban Wage Earners and Clerical Workers (published by the U.S. Bureau of Labor Statistics, Washington, DC), or such other index as may succeed the Consumer Price Index, for the twelve-month period ending the immediately preceding July 1. However, in no event shall such increase be greater than 12 percent in any one year.

3. Increase by Members. After December 31, 1990, should the Board of Directors not propose an increase in the annual assessment provided for in Subparagraph 2 above, then the maximum annual assessment may be increased by an affirmative vote of two-thirds of the members, either in person or by proxy, who are entitled to vote, at a meeting called for such purpose; and the increased annual assessments shall become the annual assessment and be thereafter adjusted pursuant to subparagraph 2 above. Written notice of such meeting shall be given by the Board of Directors to all members not less than 30 days nor more than 60 days in advance of the meeting, setting forth the date, time, place and purpose of the meeting. The provisions of this subsection shall not apply to nor be a limitation upon any change in the assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessment authorized above, 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 costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and parcels, on a per lot and parcel basis, and may be collected on a quarterly, semiannual or annual basis, as decided by the Board of Directors.

Section 6. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members, or of proxies entitled to cast 50 percent of all the votes of the membership, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Sections 3 and 4 and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The annual assessment provided for herein shall be paid in quarterly, semiannual, or annual installments and the payment of such shall commence as to each lot or parcel on the first day of the month following the conveyance of the lot or parcel. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association, upon demand at any time, shall furnish a certificate in writing signed by

an officer of the Association setting forth whether the assessments on a specified lot or parcel have been paid. A properly executed certificate of the Association as to the status of assessments on a lot or parcel is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment(s) or portion(s) thereof which are not paid when due shall be delinquent and shall constitute a lien on the lot(s) or parcel(s) owned by the person(s) delinquent in paying the said assessment(s). If the assessment(s) or portion(s) thereof are not paid within 30 days after the due date, the same shall bear interest from the date of delinquency at the rate of 12 percent per annum. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, pursuant to Article 8 of Chapter 4 of the General Statutes of North Carolina; and, in either event, interest and reasonable attorney's fees and costs of collection of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the streets, common areas or by abandonment of his lot or parcel.

Section 9. Subordination of the Lien to First Mortgage. The lien of the assessments provided for herein on any lot or parcel shall be subordinate to the lien of any first mortgage on such lot or parcel. Sale or transfer of any lot or parcel shall not affect the assessment lien; however, the sale or transfer of any lot or parcel pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot or parcel from liability for any assessments thereafter becoming due or from the lien thereof. The said lien shall be protected by and shall have priority from the date of filing of a Claim of Lien in the office of the Dare County Clerk of Court.

ARTICLE VI: ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Additional properties and improvements, including common area, may be annexed, in the manner provided for in this Article, to the property herein described. Additional properties so annexed shall be merged with the property herein described and any other previously annexed property and shall be subject to the provisions of this Declaration.

Section 2. KHL may at any time annex additional properties to the property herein described. All properties annexed shall be contiguous to the property herein described and shall be of similar nature.

ARTICLE VII: GENERAL PROVISIONS

Section 1. 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 30 years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then-owners of the lots or parcels has been recorded, agreeing to change said covenants in whole or in part.

Section 2. Enforcement. In the event of a violation or breach of any of these restrictions by any property owner, or agent of such owner, the owners of lots and parcels in the Subdivision, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, KHL shall have the right, whenever there shall have been built on any lot or parcel in the Subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the owner, if after 30 days written notice of such violation, it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained in this Declaration, however long outstanding, shall not be deemed a waiver of the right to do so thereafter, as to the same breach, or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

Section 3. Severability. Invalidation of any of these covenants, or any part thereof, by judgment or any other court order shall in no way affect any of the other provisions of this Declaration, all of which shall remain in full force and effect.

Section 4. Successors and Assigns. All references to KHL shall include their successors and assigns thereof, except that the powers and rights reserved by and to KHL shall not, by the terms of this provision, inure to individual owners, but only to the successors of KHL to whom the powers are expressly assigned.

Section 5. Amendment of Declaration without Approval of Owners. KHL, the Declarant, without the consent or approval of any other owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the property or to qualify the property or any lots or parcels and improvements thereon for mortgage or improvement loans made or insured by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale of such lots or parcels and improvements or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Association, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

No amendment made pursuant to this Section shall be effective until duly recorded in the Dare County Registry.

Section 6. Amendment. This Declaration maybe amended during the first 30 year period by an instrument signed by the owners of not less than 90 percent of the lots and parcels, and thereafter by an instrument signed by the owners of not less than 75 percent of the lots and parcels. All amendments shall become effective upon recordation.

IN WITNESS WHEREOF, Kitty Hawk Land Company, Ocean Beach, Inc., and South Ocean Beach, Inc. have caused this instrument to be executed pursuant to due authority this 12 day of June, 1990.

KITTY HAWK LAND COMPANY



Charles J. Hayes, Jr.
Charles J. Hayes, Jr.
President

ATTEST:

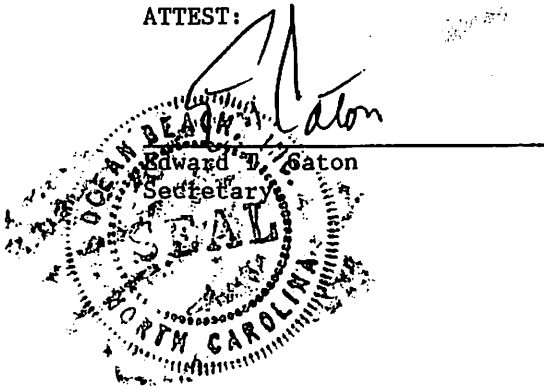
Leslie M. Whitley
Leslie M. Whitley
Assistant Secretary

OCEAN BEACH, INC.

By: W. H. Kitchin, Jr.
W. H. Kitchin, Jr.
President

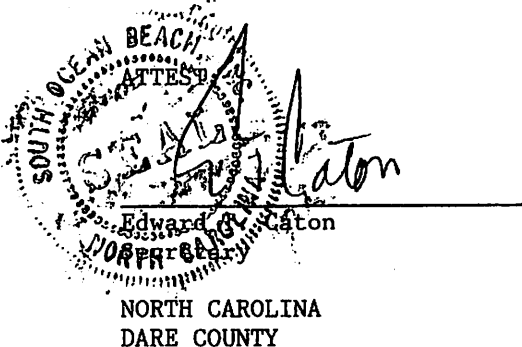
ATTEST:

BK 713 PG 0923



SOUTH OCEAN BEACH, INC.

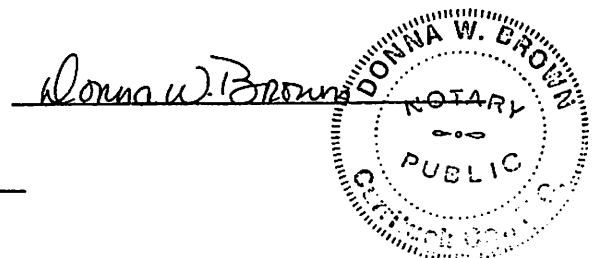
By: W. H. Kitchin, Jr.
W. H. Kitchin, Jr.
President



NORTH CAROLINA
DARE COUNTY

I, Donna W. Brown, Notary Public of the County and State aforesaid certify that Leslie M. Whitley personally came before me this day and acknowledged that she is Assistant Secretary of Kitty Hawk Land Company, a North Carolina Corporation, and that by authority duly given and as the act of its President, the foregoing instrument was signed in its name, sealed with its corporate seal and attested by Leslie M. Whitley as its Assistant Secretary.

WITNESS my hand and official stamp or seal this 19th day of June, 1990.

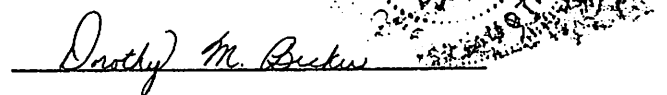


My commission expires: 10/8/90

~~NORTH CAROLINA~~ VIRGINIA
~~DARE COUNTY~~ CITY OF VIRGINIA BEACH

I, Dorothy M. Becker, Notary Public of the ^{City} ~~County~~ and State aforesaid certify that Edward T. Caton personally came before me this day and acknowledged that he is Secretary of Ocean Beach, Inc., a North Carolina Corporation, and that by authority duly given and as the act of its President, the foregoing instrument was signed in its name, sealed with its corporate seal and attested by Edward T. Caton as its Secretary.

WITNESS my hand and official stamp or seal this 12th day of June, 1990.



My commission expires: 9/30/94

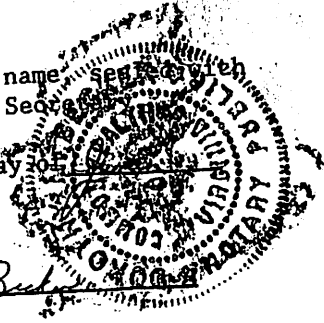
~~NORTH CAROLINA~~ Virginia
~~DARE COUNTY~~ City of Virginia Beach

I, Dorothy M. Becker, Notary Public of the ^{City} ~~County~~ and State aforesaid certify that Edward T. Caton personally came before me this day and acknowledged that he is Secretary of South Ocean Beach, Inc., a North Carolina Corporation, and that by authority duly given and as the act of

713 PO 0924

its President, the foregoing instrument was signed in its name, its corporate seal and attested by Edward T. Caton as its Secretary.

WITNESS my hand and official stamp or seal this 12th day of September 1990.



Dorothy M. Bishop

My commission expires: 9/30/94

NORTH CAROLINA DARE COUNTY

The foregoing certificate(s) of Dorothy M. Bishop, Notary Public, of
Currituck County, N.C., and Dorothy M. Bishop,
Notary Public, of the Commonwealth of Virginia
is/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 Dorris A. Fry Assistant Register of Deeds

AMENDMENT TO
DECLARATION OF PROTECTIVE COVENANTS AND CONDITIONS
SEAPINES SUBDIVISION

DUCK, ATLANTIC TOWNSHIP, DARE COUNTY, NORTH CAROLINA

THIS DECLARATION is entered into by BNE Land & Development Co. dba Kitty Hawk Land Company, Ocean Beach, Inc. and South Ocean Beach, Inc. (collectively, the "Declarant") this 17 day of September, 1991.

WHEREAS, Kitty Hawk Land Company, Ocean Beach, Inc., and South Ocean Beach, Inc. executed that "Declaration of Protective Covenants and Conditions", dated June 12, 1990 and recorded in the Office of the Register of Deeds, Dare County, North Carolina (the "Declaration"), which Declaration governs the appropriate development of the SeaPines Subdivision in Duck, Dare County, North Carolina; and

WHEREAS, by that certain Consent Agreement, dated December 28, 1990, Kitty Hawk Land Company assigned and transferred its development rights in the SeaPines Subdivision to BNE Land & Development Co. doing business as Kitty Hawk Land Company; and

WHEREAS, Article II, Section 5 of the Declaration entitled "Approval of Plans" addresses, in part, height restrictions for building; and

WHEREAS, in Article II, Section 5 of the Declaration, height is defined as "the vertical distance measured from the top plate to the finished grade or original grade at the base of the structure, which ever is greater"; and

WHEREAS, the Declarant desires to modify and amend this definition of "height" to clarify its intent; and

WHEREAS, Article VII, Section 6, of the Declaration addresses amendments to the Declaration and requires agreement by the owners of not less than ninety percent of the lots and parcels in the SeaPines subdivision.

NOW, THEREFORE, the Declarant hereby modifies and amends the Declaration as follows:

1. The definition of height as set forth in Article 2, Section 5, of the Declaration shall be amended and replaced with the following:

"Height is defined as the vertical distance measured from the finished grade or original grade at the base of the structure, whichever grade is lower. On Parcels "A" and "B", for any commercial use, the maximum height allowed for the building will be 35 feet measured to the top plate."

2. Except as herein modified, all other provisions of the Declaration shall remain in full force and affect, including, without limitation, all other provisions concerning the height of the improvements.

Affidavits of ninety percent of the lot and parcel owners in the SeaPines Subdivision are attached hereto.

IN WITNESS WHEREOF, BNE Land & Development Co. dba Kitty Hawk Land Company, Ocean Beach, Inc., and South Ocean Beach, Inc. have caused this instrument to be executed pursuant to due authority this 19 day of September, 1991.

OCEAN BEACH, INC.

(CORPORATE SEAL)

ATTEST:

Edward T. Caton
Secretary

By: W. H. Kitchin, III (SEAL)
W. H. Kitchin, III
President

SOUTH OCEAN BEACH, INC.

(CORPORATE SEAL)

ATTEST:

Edward T. Caton
Secretary

By: W. H. Kitchin, III (SEAL)
W. H. Kitchin, III
President

BNE LAND & DEVELOPMENT CO.
DBA KITTY HAWK LAND COMPANY

(CORPORATE SEAL)

ATTEST:

Leslie M. Whitley
Leslie M. Whitley,
Assistant Secretary

By: Charles S. Hayes, Jr. (SEAL)
Charles S. Hayes, Jr.,
President

NORTH CAROLINA Commonwealth of Virginia
DADE COUNTY City of Virginia Beach, to-wit:

This is to certify that on the 19th day of September, 1997, before me personally came Edward T. Caton, with whom I am personally acquainted, who, being by me duly sworn, says that W. H. Kitchin, III is the President, and Edward T. Caton is the Assistant Secretary of OCEAN BEACH, INC., the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said President, and that said President and Assistant Secretary subscribed their names thereto, and said common seal

was affixed, all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal the day and year first above written.

Dorothy M. Bunker
Notary Public

My Commission Expires:
9/30/94

NORTH CAROLINA COMMONWEALTH OF VIRGINIA
DARE COUNTY CITY OF VIRGINIA BEACH, to-wit:

This is to certify that on the 19th day of September, 1991, before me personally came Edward T. Caton, with whom I am personally acquainted, who, being by me duly sworn, says that W. B. Kitchin, III is the President, and Edward T. Caton is the Assistant Secretary of SOUTH OCEAN BEACH, INC., the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said President, and that said President and Assistant Secretary subscribed their names thereto, and said common seal was affixed, all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal the day and year first above written.

Dorothy M. Bunker
Notary Public

My Commission Expires:
9/30/94

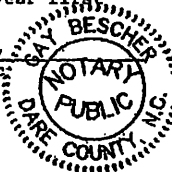
NORTH CAROLINA
DARE COUNTY

This is to certify that on the 21st day of August, 1991, before me personally came Leslie M. Whitley, with whom I am personally acquainted, who, being by me duly sworn, says that Charles J. Hayes, Jr. is the President, and Leslie M. Whitley is the Assistant Secretary of BNE LAND & DEVELOPMENT CO. dba KITTY HAWK LAND COMPANY, the corporation described in and which executed the foregoing instrument; that she knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the

name of the corporation was subscribed thereto by the said President, and that said President and Assistant Secretary subscribed their names thereto, and said common seal was affixed, all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal the day and year first above written.

Gay Beschler
Notary Public



My Commission Expires:
May 31, 1994

NORTH CAROLINA
DARE COUNTY

The foregoing certificates of _____,
a notary public of _____,
of _____, a notary public of _____,
and of _____, a notary
public of _____ are certified to be
correct.

This instrument is recorded in the book and at the page and
on the date and at the time shown on the first page hereof.

Register of Deeds

By: _____
Deputy/Assistant Register of Deeds