AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OCEANCREST SUBDIVISION, DUCK VILLAGE
SECTIONS A, B, AND C
ATLANTIC TOWNSHIP, DARE COUNTY, NORTH CAROLINA

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OCEANCREST SUBDIVISION, DUCK VILLAOE
SECTIONS A, B AND C
ATLANTIC TOWNSHIP, DARE COUNTY, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF DARE

KNOW ALL MEN BY THESE PRESENTS, that this Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "Declaration"), is made and entered into on thin 7th day of April, A.D., 1993, by VIVIAN JENKINS (widow), YOLANDA JENKINS (single) and CHARLES M. JENKINS, JR. (single) acting by and through his Attorney-in-Fact (hereinafter referred to collectively as the "Declarant"); and OCEANCREST PROPERTY OWNERS ASSOCIATION, INC. (the "Association").

WITNESSETH:

WHEREAS, the Declarant and the Association, pursuant to and in accordance with that certain Declaration of Covenants, Conditions and Restrictions dated July 15, 1992, and recorded in Book 820, at page 141, et seq. of the Dare County Registry, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions dated December 12, 1992 and recorded in Book 839, at page 355, Dare County Registry (herein referred to collectively as the "Former Declaration"), desire to and do hereby amend and restate the Former Declaration and pursuant to each amendment and restatement hereby declare that the real property described in Article One hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the terms and provisions of the covenants, conditions, restrictions, charges and liens of this Declaration, all as hereinafter set forth.

NOW, THEREFORE, in accordance with the provisions of Article Nine of the Former Declaration, the Association and Declarant do hereby amend and restate the Former Declaration, effective as of the date of the recording of this Declaration, as follows:

ARTICLE ONE
PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration (the "Existing Property") is located in Dare County, North Carolina, and is more particularly described as follows:

See Exhibit **"A"** attached hereto and incorporated herein by reference.

Section 2. Additions to Existing Property. Real property in addition to the Existing Property may hereafter become subject to this Declaration in the following manner:

(a) Additions in Accordance with a Master Plan of Development. The Declarant, its successors and assigns, shall have the right but not the obligation, without the further consent of the Association, to bring within the scheme and operation of this Declaration, additional properties

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The additions authorized under this and the succeeding subsection shall be made by filing of record in the Dare County Register of Deeds Office one or more supplementary Declaration of Covenants, Conditions and Restrictions with respect to each additional property or properties which shall extend the operation and effect of this Declaration to such additional property or properties.

Any Supplemental Declaration(s) may contain each complementary addition and modifications of this Declaration as may be necessary or convenient, in the judgment of the Declarant, to reflect and adapt to any difference in character of the added properties, and as are not inconsistent with the scheme of this Declaration. In no event, however, shall any such supplementary Declaration revoke, modify, or add to the covenants and restrictions established by this Declaration so as to affect the Existing Property; however, this provision shall not be interpreted to prohibit or prevent any increase in the "assessments" (a6 hereinafter defined) payable by a Member of the Association by reason of any such additions.

(b) Other Additions. Upon approval in writing of the Association, pursuant to authorization of two-thirds of the vote of all of all Members, voting as provided in Article Five of Section 2 hereof, the owner of any property who desires to add such property to the scheme of this Declaration and subject such property to the jurisdiction of the Association must file of record a Supplemental Declaration of Covenants, Conditions and Restrictions as described in subsection (a) above.

(c) Mergers, Combinations or Consolidations. Upon merger, combination or consolidation of the Association with another association, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights, and obligations of another association may, by operation of law; be added to The Properties of the Association as a surviving corporation pursuant to a merger, combination or consolidation. The surviving or consolidated association may administer the Covenants, Conditions and Restrictions established by this Declaration within the Existing Property, together with the covenants and restrictions established upon any other

properties is one scheme. No such merger, combination or consolidation, however, shall effect any revocation or change of, or addition to, the Covenants, Conditions and Restrictions established by this Declaration within the Existing Property, except as herein provided.

ARTICLE TWO
DEFINITIONS

The following words when used in this Declaration or any amended or supplemental Declaration (unless the context shall require otherwise) shall have the following meanings:

(a) "Assessments" or "assessments" or "Common Charges" shall mean and refer to the assessments and charges levied by the Association against Members who are the Owners of Lots or Dwelling Unite in The Properties, as well as other Members, as hereinafter defined and pursuant to Article Seven of the Declaration and Article X of the Bylaws and the words assessments or Assessments shall have the same meaning as Common Charges, unless the context requires otherwise.

(b) "Association" shall mean and refer to the OceanCrest Property Owners Association, Inc. and "Bylaws" shall mean and refer to the Bylaws of the Association.

(c) 'Beach Access" shall mean that improved walkway between Lots 35 and 36 in the pedestrian easement as shown on the recorded plat of The Properties which is provided there as part of the Common Properties for walking access to the ocean from Occancrest Way.

(d) . "Board" shall mean and refer to the Board of Directors of the Association.

(e) "Common Expenses" shall mean and refer to:

(i) Expenses of administration, maintenance, repair or Replacement of the Common Properties.

(ii) Expense declared Common Expense by the provisions of this Declaration or the Bylaws.

(iii) Expense agreed upon as Common Expense by the Association and lawfully assessed against Members who are owners of Lots or Dwelling Units, as well as other Members, in accordance with the Bylaws or this Declaration.

(iv) Any valid charge against the Association or against the Common Properties as a whole.

(f) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties (or any other real property described or referred to in any declaration of covenants, conditions and restrictions to which The Properties are submitted or subjected) labeled as "Common Properties' or shown as Recreational Facilities, streets, roads or pedestrian walking easements (together with all improvements located thereon) which are a part of The Properties, and as such intended to be devoted to the common use and enjoyment of the Members, subject to special rights and limitations, if any, granted to or imposed on Owners of particular Lots or Dwelling Unite and/or Non-Owners.

(g) The "Declarant" shall mean and refer collectively to VIVIAN JENKINS, YOLANDA JENKINS and CHARLES M. JENKINS, JR. and any person or entity who is specifically assigned the rights and interests of Declarant hereunder.

(h) "Dwelling Unit" shall mean and refer to any improved property intended for use and occupancy as one (1) single 'family dwelling, irrespective of the numbers of Owners thereof (or the form of ownership) including any single family detached dwelling located within The Properties.

(i) "Limited Common Properties" or "Limited Common Areas" shall mean and refer to those areas of land (Including without limitation any joint driveways) and improvements (Including without limitation any common entrances to a Dwelling Unit) shown on or designated as Limited Common Properties or Limited Common Areas on any recorded subdivision map of The Properties, and intended for the use of the Owners of particular lots or Dwelling Units to the exclusion of other Owners and other Members. Any property so designated shall be for the exclusive use of the Owners of the Dwelling Units or the Lots so designated on the recorded plats.

(j). "Limited Common Expense" shall mean and refer to expense of administration, maintenance, repair or replacement of Limited Common Properties or Limited Common Area; which shall be assessed against those Lots or Dwelling Units having the exclusive or special rights in the use or enjoyment thereof.

(k) "Living Area" shall mean and refer to those heated and/or air-conditioned areas within a Dwelling Unit which shall not include garages , carports, porches, patios, storage areas, breezeways, terraces, basements or playrooms.

(l) "Lot" shall mean and refer to any unimproved parcel of land within the properties which is intended for use as a site for a single family detached dwelling, as shown upon any recorded subdivision map of any part of The Properties, with the exception of Common Properties or Limited Common Properties a parcel of land shall be deemed to be unimproved until the improvements being Constructed thereon are sufficiently complete to be subject to assessment as improved property, i.e., a Dwelling Unit.

improved property, i.e., a Dwelling Unit.

(m) "Member" shall mean and refer to all those Owners and Non-Owners who are Members of the Association as provided in Article Five, Section 1, of the Declaration .

(n) "Owner" shall mean and refer to the record owner, whether one or more person o r entities , of the fee simple title to any Lot or Dwelling Unit situated upon The Properties , but not withstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(o) "Non-Owner" shall mean and refer to all those persons or entities who do not hold title to any of The Properties but who are Members of the Association, as provided for in Article Five, Sections 1 and 2 (c) of this Declaration.

(p) "The Properties " shall mean and refer to all the Existing Property and any additions thereto as are made subject to this declaration by any Supplemental Declaration under the provisions of Article One of this Declaration.

(q) "Recreational Facilities" shall mean and refer to the areas(s) if any, shown and designated as such on any recorded subdivision map of The Properties, and any improvements erected or to be erected upon any such area (s) .

ARTICLE THREE
GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of, and be enforceable by, the Association or any Owner, its and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by two-thirds (2/3) of the Members of t h e Association has been recorded, agreeing to change said covenants and restrictions 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 Member at Least ninety (90) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any Member or Owner, under the provisions of this Declaration, shall be deemed to have been properly sent when mailed, postpaid, Certified Mail – Return Receipt Requested, to the last known address of the person who appears as Member or 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 of Dwelling Unit is held by more than one, shall constitute notice to all Owners of a Lot or Dwelling Unit.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or both, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants and restrictions by judgment or court, order shall in no way affect any other provision which shall remain in full force and effect.

ARTICLE FOUR
ARCJITECTURAL CONTROL AND RESTRICTIONS ON USE AND RIGHTS OF THE ASSOCIATION, DECLARANT AND OWNERS

Section 1. Architectural Control.

(a) Purposed. The Declarant desires to provide for the preservation of the values in The Properties with respect to any Dwelling Unit to be constructed on any Lot constituting a portion of The Properties, and to that end, desires to establish an Architectural Control Committee in order to provide and maintain certain standards as to harmony of external design and location in relation to surrounding structures and topography.

(b) Architectural Control. Unless expressly authorized in writing by the Architectural Control Committee (the "Committee") no Dwelling Unit, fence, wall, driveway or other structure nor any exterior addition or alteration to any existing Dwelling Unit, nor any clearing or site work shall be commenced, erected or maintained upon The Properties, until plans and specifications therefore showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, driveway, parking, well, septic tank and drain field, floor plan and elevations therefore (all of which is hereinafter referred to as the 'Plans"), shall have been submitted in duplicate to and approved in writing, as to harmony of external design and location in relation to any surrounding structure and topography, by the Committee. 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; provided that the Committee shall not refuse to approve any plans and specifications which are substantially similar to any other plans and specifications which previously have been approved for any Dwelling Unit. In no event will the committee approve any plane in which the Dwelling Unit at the highest point on the roof exceeds 35 feet in height, measured from the finished grade or original grade, whichever grade Le lower. In no event shall the Committee, in the exercise of its

discretion, approve the location of a Dwelling Unit or garage within 25 feet of the front line of any Lot, within 10 feet of the aide lines of any Lot and within 20 feet of the rear line of any Lot.

(c) Architectural Control Committee.

(i) Membership. The Committee shall be composed of three (3) persons, 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 a successor. Unless otherwise approved by the Association, neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Association shall keep, or cause to be kept, a lot of the names and addresses of the persona who form the committee and a lint of the names and addresses of any designated representatives of the Committee, and such a list shall be available to any owner.

(ii) procedure. At least thirty (30) days prior to the 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 decisions of a majority of the Committee, in case of any disagreement among the Committee members, as to the approval, disapproval or waiver by the Committee, shall be controlling. In the event the Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after Plans have been received by it, whether before or after construction has commenced, 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; furthermore, 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 Properties, within ninety (90) days after the foundation of any Dwelling Unit being constructed on any such Lot La completed, then and in any ouch 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.

(iii) Application of this Article. This Article Four shall apply to any additions to The Existing Property subsequently made subject to this Declaration and the terms and provisions of any supplemental or amended Declaration.

Section 2. Restrictions on Use and Rights of the Association, Declarant and Owners; Prohibition Against Time Sharing or Other Devises.

(a) Permissible Uses. No Lot shall be used except for residential purposes

(with the exception of any sales center constructed by the Declarant), and no building of any type shall be erected, altered, placed, or permitted to remain on any Lot other than a Dwelling Unit, which shall comply with any applicable zoning regulations. When construction of any Dwelling Unit, structure, improvement, or addition thereto has once begun, work thereon shall be prosecuted diligently and ,continuously until the full completion thereof.

(b) Division of Lots. No Lot shall be further divided, except that any two Owners may divide a Lot between them if such Lot is adjacent to the Lots owned by each Owner and provided further that only one Dwelling Unit may be constructed on the Lot as subdivided and combined.

No unit of ownership or ownerships interest may be subdivided to permit "Time Sharing or other "devices" to effect interval ownership unless approved by the Association subject to conditions which may be imposed by the Association. For purposes of this section "Time Sharing" or other "devices' to effect interval ownership shall include but not be limited to ownership arrangements, including uses of corporations, trusts, partnerships or tenancies in common, in which four or more parsons not members of a single household have acquired, by means other than will, descent, inheritance or operation of law, an ownership interest (directly or indirectly, equitable or legal) in the same Dwelling Unit and each owners have a formal or informal right-to-use or similar agreement.

(c) Utilities and Easements. All utility lines of every type, including but not limited to water, electricity, telephone, sewage and television cables, running from the main trunk line or service location to any Dwelling Unit must be underground. 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 and telephone systems, wires, cable, and conduit for the purpose of bringing public service to The Properties on, in, under and over (i) the streets or roads as shown on any recorded plat of The Properties, (11) within twenty (20) feet of each Lot line fronting on a street and within ten (10) feet along the side lines of each lot, and (iii) within twenty (20) feet along the rear line of each Lot, and such other areas as are so identified on any recorded plate of The Properties; provided further, that the Association may cut, at its own expense, drain ways for surface water and/or install underground storm drainage, wherever and whenever much action is required by applicable health, sanitation or other state or local authorities in order to maintain reasonable standards of health, safety and appearance. In the event of any additions to The Properties, as provided in Article One, by the Declarant or others, the easements created hereby shall exist on the Lots in such additions to The Properties. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or to take any other similar action.reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

(d) Minimum Square Feet in Dwelling Unit. Each Dwelling Unit shall contain a minimum of 2,000 square feet of Living Area. Measurements shall be made to exterior walls.

(e) Temporary Structures. No structure of a temporary character shall be placed upon any Proper ties at any time, provided, however, that this prohibition shall not apply to shelters or huts used by contractors during the construction of a Dwelling Unit, or improvements or additions thereto, on any Lot. Temporary shelters, tents, recreational vehicles, trailers (whether attached or unattached to the realty) may not, at any time, be used as a temporary or permanent residence or permitted to remain on any portion of The Property.

(f) Committee Approval of Plans and Other Prohibitions.

(i) As provided in Section 1 of this Article Four, no Dwelling Unit, structure, building, appurtenance, attachment, improvement or addition shall be built, constructed or maintained unless the Plane therefore have been approved in writing by the Committee and such building or construction is completed in strict accordance with said Plana. In addition, any such Dwelling Unit shall comply with all applicable building, plumbing, electrical and other codes.

(ii) No vent or other pipes or appendages may extend from the front of any Dwelling Unit, unless screened from public view by a screening material or shrubbery approved by the Committee.

(iii) Any exterior air-conditioning or heating equipment must be screened from public view by a screening material or shrubbery approved by the Committee.

(iv) Down spouts and gutters must be so constructed as to not promote the erosion of the soil of any Lot.

(v) Exterior spotlighting shall be directed so as not to cast light directly on another Dwelling Unit.

(g) Garbage and Storage Receptacles. Except as required by any appropriate governmental authority, each Owner shall provide receptacles for garbage, and all garbage receptacles, tools and equipment for use on the Lot of any Owner or otherwise shall be placed in a fenced area in accordance with reasonable standards established by the Committee to shield same from general visibility from roads abutting the Lot. No fuel tanks or similar storage receptacles, other than solar panels and related storage facilities, may be exposed to view and such fuel tanks or similar storage receptacles may be installed only within the Dwelling Unit, or an accessory building, or buried underground.

(h) Debris. No leaves, trash, garbage or other similar debris shall be burned except as permitted by the appropriate governmental authority. No garbage, trash, construction debris or other unsightly or offensive material shall be placed upon any portion of The Properties, except as is temporary and incidental to the bona fide improvement of any portion of The Properties.

(i) Antennae. No television antennas, satellite dish, radio, receiver or sender or other similar device shall be attached to or installed on the exterior portion of any Dwelling Unit, structure or any Lot or Common Properties within The Properties; provided, however, that the provisions of this paragraph shall not apply to the installation by the Association of equipment necessary for a CATV and mobile radio systems within The Properties.

(j) Sewage Disposal. Prior to the occupancy of any Dwelling Unit located in The Properties, proper and suitable provisions shall be made by the Owner for the disposal of sewage by means of a septic tank or tanks constructed on his Lot. No sewage disposal system shall be used unless such system is deigned, located, constructed and maintained in accordance with the requirements, standards and recommendations of the appropriate public health or environmental authorities. Each septic tank and the nitrification (drain) field relating thereto shall be maintained in good condition so that its use and existence shall not constitute a nuisance to any other Owner. If at anytime a public or community sewage system is constructed so as to provide service to The Properties, each Owner shall be required to bear his pro rata share of the cost of such system and shall be required to hook up to this public or community sewage system and bear any expense incidental thereto.

(k) Trees and Foliage. Trees measuring three (3) inches or more in diameter, at a point two (2) feet above ground level, and any flowering trees or shrubs above five (5) feet in height may not be removed from The Properties without the written approval of the Committee, unless located within ten (10) feet of a Dwelling Unit, or site for such Dwelling Unit, septic tank notification field or driveways and walkways located or to be located on any Lot. Excepted here from shall be damaged trees or trees which must be removed because of an emergency.

(l) Unsightly Conditions. It is the responsibility of each Owner to prevent any unclean, unsightly, or unkept conditions of his Dwelling Unit or grounds on a Lot of any Owner which ahall,tend to materially decrease the beauty of The Properties specifically and as a whole.

(m) No Offensive Activity or Fires. No noxious or offensive activity or excessive noise shall be carried on upon any portion of The Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner, tenant or guest thereof, in any portion of The Properties.

Fires on any Lot or on any portion of the Common Properties are prohibited unless procedures adopted by the Board are strictly complied with.

(n) Animals and Pets. Except as otherwise permitted herein, or in any amended Declaration, no plants, animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of other Lots or Dwelling Units by any Owner, tenants and guests thereof, may be maintained. no animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or Dwelling Unit, except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

(o) Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows within The Properties is prohibited unless required for public safety.

(p) Motorized Vehicles. All motorized vehicles operating within the Properties must be properly muffled so as to eliminate noise which might be offensive to others. All vehicles and bicycles (motorized or otherwise) are prohibited from being used or operated on or within the Common Properties or t h e frontal dune system and all vehicles and bicycle shall remain on roads within the Common Properties.

(q) Signage. No signs of any kind shall be displayed to the public view on any Lot or Dwelling Unit except one (1) sign with dimensions of not more than two feet by three feet advertising any Lot or Dwelling Unit for sale or rent. All other signs on any Lots must be approved in writing by the committee. Notwithstanding the foregoing, the Declarant shall have the right to locate signs indicating the location of sales and rental centers, any Recreational Facilities and much other information as may be required on any Lot on which the Declarant locates much ,a facility.

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(r) Pavement of Joint Walkways. Any joint walk (Limited Common Properties) shown on any recorded subdivision map of The Properties, if and when improved, shall be improved and maintained by the Owners of the Lots on which each joint walk about.

(s) Vegetation. No existing vegetation or sand dunes shall be disturbed during construction without the express written consent of the Architectural Control Committee. The Architectural Control Committee shall require written proposal for the restabilization of any such disturbed area. Any vegetation disturbed during construction shall be repaired to the satisfaction of the Architectural Control Committee prior to Owner applying for an occupancy permit from Dare County or the appropriate municipal body. This shall not prevent the Architectural Control Committee from engaging in such earthmoving, cleaning,

mowing, and pruning activities as are necessary to affect the overall plan of development.

(t) Mail and Delivery Boxes. The Architectural Control Committee shall determine the standards and issue guidelines thereof for the location, material, color and design for mail and newspaper boxes, if any, and the manner in which they shall be identified. All 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.

(u) Residential Lot Coverage. In compliance with the Dare County Zoning Ordinance limitations, no more than 30 percent of any 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 storm water runoff rules adopted by the State of North Carolina and thus may be enforced by the State of North Carolina.)

(v) Reservation of Special Landscape Easement. Declarant reserves unto itself, it's heirs, successors and assigns, a perpetual alienable and releasable easement and right on, in, over and under certain of the Lot described below for the purpose of installing and maintaining decorative landscaping, planting, and grass (collectively "Landscaping") , as 'well as an underground I irrigation system to service the Landscaping. These easement areas are as follows:

(i) On Lots 18, 19 and 20 within the rear yard setback areas where such Lots front State Route NC 12.

(ii) On Lot 17 within the rear yard setback area where such Lot fronts State Route NC 12 and within the aide yard setback area where such lot fronts Charles Jenkins Lane.

(iii) On Lot 54 within the side yard setback area where such Lot fronts State Route NC 12 and within the front yard setback area where such Lot fronts Charles Jenkins Lane.

Upon the installation of the Landscaping and irrigation system and commencing in January of 1993, the Association shall be obligated to and responsible for maintaining such Landscaping and irrigation system.

ARTICLE FIVE
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner of a fee simple interest in any Lot or Dwelling Unit is subject by this Declaration to all assessments of the association and shall be a Member of the Association; provided, however, that any such person or entity who holds such interest merely

as a security for the performance of an obligation, shall not be a Member. There may also be as many as thirty (30) additional Non-Owner Members (Class C Members) as defined in Article Five, Section 2(c) of this Declaration and as provided for in Article Ten, Section 2 of this Declaration. Such non-owner Members will also be subject to the assessments of the Association as more particularly described in Article Seven of this Declaration.

Section 2. Voting Rights. The Association shall have three (3) classes of voting membership:

(a) Class A: Class A Members shall be all Owners of Lots and Dwelling Units, other than the Declarant. Any Class A Member shall be entitled to one and one-half (1-1/2) vote for each Dwelling Unit which he owns. An Owner of a Lot upon which a Dwelling Unit has not been constructed shall be entitled to one (1) vote for each Lot which he owns. It 1s the intent of this provision that so long as property qualifies as a Lot, by virtue of the fact that improvements have not been constructed thereon, the Owner thereof shall have only one (1) vote, but once the improvements are constructed (the improvements shall be deemed to be "constructed" upon obtaining a permit from Dare County or other applicable authority for the hook up of permanent power) on said Lot and it loses its character as a Lot and becomes a Dwelling Unit the Owner thereof shall have a total of one and one-half (1-1/2) votes for the ownership of such Dwelling Unit.

(b) Class B: The class B Member shall be the Declarant, which shall be entitled to three (3) votes for each Lot owned by it within The Properties (Including any additions to the Existing Property). The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs first:

(i) When the total votes outstanding in Class A Membership equal the total vote outstanding in the Class B Membership, or

(ii) December 31, 1998.

(c) Class C: Class C Members shall be those Non-Owners, not ever to exceed thirty (30) In number, who are described and allowed for in Article Ten, Section 2 of this Declaration, with each such membership to be assigned by the Declarent to some person or entity who own nearby property. Each Class C Member shall be entitled to one-half (1/2) vote per membership.

When more than one person or entity holds an interest in any Ocean Crest Lot or Dwelling Unit, all such persons shall be Members (but subject to voting limitations), and when more than one person or entity holds an interest in any non-Oceancrest property to which a Class C membership has been assigned, all such persons (but not more than four (4) families) shall be Member (but subject to voting limitations). In these canes the vote for such multi-owner properties

shall be exercised as they among themselves determine and each persons shall designate one (1) person to vote for their Lot or Dwelling Unit, or non-Ocean Crest property, but in no event shall more than one (1) vote be cast with respect to any such Ocean Crest Lot, one and one-half (1-1/2) votes with respect to any such Ocean Crest Dwelling Unit, or one-half (1/2) vote with respect to any such non-Oceancrest property.

ARTICLE SIX
PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Member's Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Owner Member shall have a right and easement of enjoyment in and to all of the Common Properties and such easement shall be appurtenant to and shall pace with the title to every Lot or Dwelling Unit; and each Non-Owner Members shall have a right and easement of enjoyment in and at the Recreational Facilities and Beach Access and such easement shall be appurtenant to and shall pass with the title to the non-Oceancrest property to which the Class C membership is assigned.

Section 2. Title to Common Properties. The Declarant may retain the legal title to any Common Properties, other than easement or roads shown on any recorded plat of The Properties, until such time as it has completed Improvements, if any, thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same but, not withstanding any provision to the contrary herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey and upon such conveyance the Association shall accept any such Common Properties to the Association not later than December 31, 1996. Prior to the date of any transfer of the streets and road to the appropriate government agency or authority by the Association, said streets and roads shall be Common Properties and the expense of maintenance shall be borne by the Association.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created herein shall be subject to the following:

(a) The right of the Declarant, in its sole discretion and at no cost to any Member, to grade, pave or otherwise improve any road or street shown on any recorded plat of The Properties.

(b) The right of this Association, as provided in its Articles or By-Laws, to suspend the enjoyment rights of any Member for any period during which any assessment of that Member remains unpaid, and for any period not to exceed thirty (30) days for any infraction of any published rules and regulations adopted by the Board and

(c) The right of the Association to dedicate or transfer all or any part of the Common Properties (which includes streets and roads) to any public agency, authority or utility for such purposes and subject to each conditions as may be

agreed to by the Members; provided, however, that no such dedication, transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless fifty-one percent (51) of the votes of Members entitled Lo vote, at a Special Meeting of the Members called in accordance with the By-Laws (any consents in writing presented to the Secretary or other officers of the Association at or prior to ouch meeting shall constitute votes of Members consent to and approve of such dedication, transfer, purpose or condition. If so agreed to and approved by the Members, such dedication and transfers. specifying the purposes(s) and condition(e) thereof, shall be executed by the President and Secretary of the Association with the same formalities of a deed and recorded in the Dare County Public Registry.

(d) The rights of Members of the Association shall in no way be altered or restricted because of the location of Common Properties In any additions to the existing property constituting a portion of The Properties in which each Member is not a resident. Common Properties belonging to the Association shall result in membership entitlement, not withstanding that the Lot or Dwelling Unit of an a Owner or of the property of a Non-Owner acquired which results in membership right as herein provided is not located within any property (phase), made subject in whole or in part to this Declaration, which contains any Common Properties.

(e) The right of the Association or its assignee to charge reasonable admission and other fees for use of any Recreational Facilities situated upon the Common Properties.

(f) The right of the Declarant to grant in perpetuity nonexclusive easements for access across the beach access walkway within the pedestrian easement between Lots 35 and 36 as shown on the recorded plat of The Properties to the owners of the other Lots or unit. (not more than 70 in the aggregate including those having such rights under Article 10) in real properties near by The Properties in exchange for such consideration as shall be acceptable to the Declarant, in its sole discretion.

Section 4 . Driveways Culverts. Each Owner, if required by the Architectural Control Committee in the approval of the Plans process, 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 5 . Stormwater Management Improvements. The Association, after each time as the Declarant no longer owns any of the Common Properties in The Properties, will be responsible for maintenance of any storm water management swales, channels, and check dams and to see that each Owner installs and

maintains his driveway culvert as per Section 4 of this Article. 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 vegetation cover on a periodical, as required basis.

ARTICLE SEVEN
COVENANT FOR PAYHENT OF ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner, other than the Declarant, of any Lot or Dwelling Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, as well as each Non-Owner who is a Class C Member pursuant to Article Five, Section 2(c) of this Declaration, shall be deemed to and does hereby covenant and agree to all the covenants, conditions and restrictions of this declaration and to pay, in the case of-class C Members, to the Association: (1) annual assessments or charges as herein or in the By-Laws provided, (2) special assessments for capital improvements (such annual and special assessments to be fixed, established, and collected from time to time as herein or in the By-Laws provided), and (3) any liquidated damages or summary charges imposed under authority contained in the By-Laws, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association incidental to the enforcement of any Rules and Regulations, collection of assessments (both annual and special) or collection of damages or charges arising under the By-Laws. The annual and special assessments of an Owner and any liquidated damages or summary charges as herein or in the By-Laws provided, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the Lot or Dwelling Unit against which each assessment is made. Each such assessment, together with such interest there and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons jointly and severally, who in (a r e) the Owner(s) of such Lot or Dwelling Unit at the time when the assessment fell due. The Assessments payable by Class *C* Members, whose only rights are In the Recreational Facilities and Beach Access, will always be one-half (1/2) of that of the Class **A** Members and in the event of non-payment of any Assessment, the Class C Member may face permanent forfeiture of his rights of Membership as provided for in Article Ten, Section 2 of the Declaration.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, security, safety and welfare of the residents of The Properties and in particular for:

(a) the improvement, maintenance, and replacement of the common Properties including, without limitation, the Recreational Facilities. (NOTE: The streets

in Oceancrest are private and will be maintained by the Association from these assessments. Charles Jenkins Lane West is a 30' right of way which does not meet the North Carolina Department of Transportation standards for rights of way and thus can never be accepted into the state system.)

(b) maintenance of exteriors of Dwelling Units and related Improvements on Lots (subject to reimbursement by the Owner(s) of such Lot or Dwelling Unit) pursuant to Article Eight, Sections I and 2 of the Declaration,

(c) establishment of capital replacement reserves, and

(d) for the acquisition of services and facilities devoted to the foregoing purpose or for the use and enjoyment of the Common properties, Including but not limited to, the coat of repair, replacements, additions, the coat of labor, equipment, material, management and supervision, the payment of taxes assessed against the Common Properties, the procurement and maintenance pf insurance related to the Common Properties, its facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association if necessary, and such other requirements an are necessary to perform all of the aforesaid functions and purposes'.

Section 3. Assessment of Uniform Rates Within Different Categories or Forms of Ownership. Both annual and special assessments shall be fixed at uniform rates for every Lot or Dwelling Unit within the category or form of ownership applicable to each Lot or Dwelling Unit. There will be no difference between assessments as to Lots, except to the extent Limited Common Properties are located on a Lot or Lots, or between assessments as to Dwelling Units. In addition, the Owner(s) of some Dwelling Units may be subject to an assessment for the maintenance, improvement and replacement of any Limited Common Properties located on or adjacent to the Lot on which such Dwelling Unit is located.

Section 4. Application of Minimum and Maximum Assessments. The minimum regular annual assessments, as set forth in the schedule herein below, shall be levied by the Association unless the Board of the Association, by majority vote, determines that the important and essential functions of the Association may be properly funded only by an assessment above the minimum but not more than the applicable maximum regular assessment,, as sat forth in the schedule below. If the Board of Directors shall levy the applicable minimum assessment for any assessment, year and thereafter, during each assessment year, determine that the important and essential functions of the Association cannot be funded by the minimum, The Board, by unanimous decision, may levy a supplemental assessment, but in no event shall the sum of the minimum and supplemental regular annual assessment for the year exceed the applicable maximum regular assessment.

The regular annual assessment minimum and maximum amount shall be the sums

calculated in accordance with the following schedule as may be Increased in each instance by an inflation adjuster set forth herein below.

	Minimum Regular Annual Assessments	Maximum Regular Annual Assessments
1. Owner Members:		
(a) Per Lot	$400.00	1,000.00
(b)Per Dwelling	$600.00	1,500.00
2. Non-Owner Members:		
(a) Per unimproved lot	$200.00	$500.00
(b) Per dwelling unit	$300.00	$750.00

Commencing with the calendar year beginning January 1, 1994, the minimum and maximum regular annual assessments shall automatically be increased each year, unless the Board of Directors, by unanimous decision, shall determine otherwise, by five percent (59) per annum, compounded annually. In the alternative, the Board of Directors, by unanimous decision, may determine that the amount of the automatic five percent (59) Increase is inadequate and that the amount of the annual increase should be the percentage Increase between the first month and the last month of an annual assessment period in the Consumer Price Index for All Urban Consumers, All Items ALL Cities Average (1982-84 = 100), hereinafter called the "CPI-U" published by the United States Department of Labor. In the event that the CPI-U shall be discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living. The Board of Directors may by unanimous decision, after consideration of current cost and future needs of the Association, fix the annual regular assessment for any year at an amount less than the applicable minimum regular annual assessment, but such action shall not constitute a waiver by the Association of its right to revert to the full regular minimum assessment in subsequent years.

Section 5. Special Assessment for Capital Improvements. In addition to the regular annual assessments authorized by Section 4 hereof, the Association may levy in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of profeaeLonal or consulting fees, any construction or reconstruction, unexpected repair. or replacement -of any capital improvement (including, without limiting the generality thereof, any lake, waterway, or pond) located upon the Common Properties or the Limited, Common Properties, Including the necessary fixtures and personal property related thereto, provided that any much assessment shall have the consent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of

which shall be sent to all Members in accordance with the provisions of the By-Laws for Special Meetings. In the event of any such Special Assessment for Capital Improvements, Class C Members will be assessed only in the event that Improvements were made to the Recreational Facilities or Beach Access.

Section 6. Change in Basis and Maximum Amount of Annual Assessments. Subject to the limitations of Section 4 hereof and for the period therein Specified, the Association may change the maximum amount and basis of the regular annual assessments fixed by Section 4 hereof prospectively for any such period provided that any such change shall have the consent of two-thirds *(2 1 3)* of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members in accordance with the provisions of the By-Laws for Special Meetings; provided further, that the limitations of Section 4 hereof shall not apply to any change in the maximum amount and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized by law to participate or as an incident to any (I) additions to The Properties under Article One, Section 2 or (ii) submission pursuant to Article One, Section 2 of this Declaration.

Section 7. Quorum for any Action Authorized Under Sections 5 and 6. The quorum required for any action authorized by Section 5 and 6 of this Article shall be as follows:

At the first meeting called, as provided in Sections 5 and 6 of this Article, the presence at the meeting of Members, or of proxies, entitled to cast a majority of all the votes of the membership shall constitute a quorum. If the required quorum Le not forthcoming at such meeting, another meeting may be called, subject to the notice requirement set forth in Sections 5 and 6 of this Article, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding scheduled meeting.

Section 8. Date of Commencement of Annual Assessments Due Dates. The regular annual assessments provided for herein shall be paid (as determined by the Board of Directors) in quarterly, semiannual, or annual installments. The payment of the regular annual assessment by Owners shall commence to each Lot and Dwelling Units on the first day of the month following the conveyance of the Lot or Dwelling Unit, but no earlier than January 1, 1993, and the payment of the regular annual assessment by Class C Members (Non-Owners) shall commence on the first day of the month following the month that each such Class C membership is granted to a Non-Owner. 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 fifteen (15) day in advance of each annual assessment period. Written notice of the annual

assessment shall be sent to every Member subject thereto. The due dates shall be established by the Board of Directors. The Association, upon any qualified demand, at any time, shall furnish a certificate in writing signed by an officer of the Associations setting forth whether the assessment on a specified Lot or Dwelling Unit, or for a specific Class C membership, has been paid. Such properly executed certificate of the Association as to the statue of the assessment is binding upon the Association as of the date of its issuance. The first assessments levied against any additions co The Properties, not I now subject to assessment, at a time other than the beginning of any assessment period, shall be an amount which bears the same relationship to the annual assessment provided for in Section 4 of this Article as the remaining number of months in that year bear to twelve.

The due date of any special assessments under (i) Section 5 hereof, or (LL) any other assessment permitted by this declaration, shall be fixed in the resolution or resolutions authorizing such assessment.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement, and the amount of the assessment or assessments against each Member, for each assessment period at least fifteen (15) days in advance of such date or period and shall, at that time, prepare a roster of the Member and assessments applicable thereto which shall be kept in the Office of the Association, or at any other place designated by the Board upon notice to the Members, and shall be open to inspection by any Member. Written notice of the assessment or assessments thereupon shall be sent to every Member subject thereto.

Section 10. Effect of Non-Payment of an Owner's Assessment: The Personal Obligation of the Owner; The Lien, Remedies of Association.
If the assessment of an owner are not paid on the date due (being the dates referred to in Section 8 of this Article), then such assessments shall become delinquent and shall, together with such interest thereon and coat of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot or Lots, or Dwelling Unit or Dwelling Unite, which shall bind such Lot or Lots, or Dwelling Unit or Dwelling Units, in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then-Owner to pay such assessment shall remain his personal obligation for the statutory period and, in addition, shall pass to his successors in title (as an encumbrance or lien against the Lot or Dwelling Unit) unless expressly waived by the Board of Directors.

I f the assessment or assuagements is(are) not paid within thirty (30) days after the delinquency date, the assessment or assessments shall bear Interest from the date of delinquency at the rate of interest set by the Board, not to exceed the maximum rate permitted by law, and the Board acting on behalf of the

Association, may authorize its officers to bring appropriate civil action against the Owner personally obligated to pay the same or to foreclose the lien against any ouch Lot or Lots, or Dwelling Unit or Dwelling Units, and there shall be added to the amount of such assessment, the costs of such action and reasonable attorneys fees or other cost incurred by the officers of the Association pursuant to authority of the Board. In the event a judgment is obtained against any Owner for such assessment, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the cost of the action.

Section 11. Subordination of the Lien on an Owner's Property to Mortgages or Deeds of Trust. The lien on an Owner's property of the assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Lot or Lot, or Dwelling Unit or Dwelling Units, subject to assessment. The subordination shall not relieve any Lot or Lots, or Dwelling Unit or Dwelling Units, from liability for any assessments now or hereafter due and payable, but the lien thereby created shall be secondary and subordinate to any first mortgage or deed of trust as if said lien were a second mortgage, irrespective of when such first mortgage or deed of trust was executed and recorded.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all Common Properties as defined in Article Two hereof; and (b) all properties exempted from. Taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption. Homestead exemptions shall not be considered an exemption.

Notwithstanding any provisions of this Section 12, no Lot or any Dwelling Unit hall be exempt from said assessments, charges or liens.

Section 13. Declarant's Obligations for Assessments. Prior to January 1, 1999, the Declarant's obligation for assessments on unsold Lots or Dwelling Units subject to this Declaration will be limited to the difference between the actual operating costs of the Association, excluding reserves on the Common Properties, and the assessments levied on the existing Members other than the Declarant. In no event, however, will the Declarant be required to make a deficiency contribution in any amount greater than it would otherwise be liable for if it were paying assessments on unsold Lots or Dwelling Units owned by Declarant. After December 31, 1998, Declarant shall pay assessments as would any other Owner for each Lot or Dwelling Unit owned by the Declarant.

ARTICLE EIGHT
Exterior Maintenance and Insurance

Section 1. Exterior Maintenance. In addition to maintenance on the Common

Properties and after thirty (36) days written notice to any Owner which shall specify the required maintenance, the Association shall have the right but not the obligation to provide (a) maintenance upon any Lot and (b) maintenance upon any Dwelling Unit, which is subject to assessment under Article Seven hereof. Such maintenance includes (but is not limited to) painting, repairing, rep1acir.g and care of roofs, gutters, downspouts, removal of signs in violation of this Declaration, and exterior Improvements on any Dwelling Unit. Such maintenance as to a vacant Lot may include the mowing of grass and weeds, the trimming of shrubs, or the removal of trash and litter.

Section 2. Assessment of Cost on Exterior Maintenance. The cost of any such maintenance shall be assessed against the Lot or Dwelling Unit upon which such maintenance is done and shall be added to and become part of the regular annual assessment or charge to which such Lot or Dwelling Units subject and, a6 part of such regular annual assessment or charge, it shall be a lien against any such Lot or Lots, or Dwelling Unit or Dwelling Unite, as heretofore defined and limited, and a personal obligation of the Owner and shall become due and payable in all respects as provided herein.

Section 3. Insurance on Dwelling Units. Each Owner of any Dwelling Unit within The. Properties, by acceptance of a deed therefore, whether or not it shall be expressed in said deed or by exercise of any act of ownership, is deemed to covenants

(a) To keep each dwelling Unit insured against loss by fire or other Casualty, with extended coverage insurance, in an amount equal to at least 90% of the replacement cost of such Dwelling Unit;

(b) To name the Association as an insured "as its interest may appear', so that the Association shall be entitled to receive notice of cancellation of such insurance policy

(c) To build or restore such Dwelling Unit in the event of damage thereof and to apply the full mount, to the extent necessary, of any insurance proceeds to the restoration or repair of such Dwelling Unit; and

(d) To keep the Dwelling Unit in good repair as required by this Declaration or by the Bylaws.

In the event of nun-payment of any premium for insurance required under this Article Eight, the Association is authorized, but not obligated or required, to pay such premium and the sum so paid shall become a lien upon the Dwellin Unit enforceable in the same manner and to the same extent as provided for enforcement of liens for assessments hereunder.

ARTICLE NINE
AMENDMENT TO DECLARATION

An amendment to this Declaration may be proposed by the Board of Directors acting upon a vote of a majority of the Directors, or by a majority of the Members of the Association, whether meeting as Members or by instrument in writing signed by them. Upon any Amendment to this Declaration being proposed by the Board of Directors or Members, such proposed Amendment shall be transmitted in writing to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call d Special Heating of the Members of the Association for a date not sooner than ten (10) days nor later than fifty (50) days from receipt by him of the proposed Amendment. It shall be the duty of the Secretary to give to each Member written notice of such special Meeting, stating the time and place. and reciting the proposed Amendment in reasonably detailed form, which notice, if mailed, shall be mailed not leas than ten (10) days nor more than fifty *(50)* days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Hail, Certified with Return Receipt Requested, addressed to the Member at his Post Office address as it appears on the records of the Association, the postage thereon prepaid. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such Member. At the meeting, the Amendment proposed must be approved by an affirmative vote of sixty-six percent (66%) of the votes of Members (including the Declarant) entitled to vote in order for such Amendment to become effective. At any meeting held to consider such Amendment, the written vote of any Member of the Association shall be recognized and counted if such Member 1s not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to or at such meeting. In order for much Amendment to be binding upon all the holders of mortgages or deeds of trust against any Lot or Dwelling Unit In The Properties, written consent must be obtained from the then existing (as of the date of the meeting of Members which approved such Amendment) holders of First Lien Mortgage or Deeds of Trust encumbering fifty-one percent (51%) of the Lots and Dwelling Units in The Properties encumbered by First Lien Mortgages or Deeds of Trust. If such consent is to obtained, the Amendment shall be binding on all the holders of mortgages or deeds of trust encumbering Lots and Dwelling Unite in The Properties. If so approved, such Amendment of this Declaration shall be transcribed and certified by the President and Secretary of the Association is having been duly adopted and approved by the requisite percentages of Member and lenders. The original or an executed copy of such Amendment so certified and executed by said officers with the same formalities as a deed, shall be recorded in the Dare County Public Registry, and no such Amendment to this Declaration shall be effective until so recorded. If any Amendment to the Declaration creates an Inconsistency in the Bylaws, to the extent such inconsistency exits,

the Declaration shall control.

ARTICLE TEN
Recreational Facilities and Beach Access

Section 1. The Declarant intends to locate one (1) swimming pool and one (1) tennis court (collectively the "Recreational Facilities") within the "Recreational Area" and one (1) beach access walkway in the pedestrian easement between Lots 35 and 36 (the "Beach Access"), as shown on the recorded plat of The Properties. These Recreational Facilities and Beach Access will be provided for the benefit of all Members, their tenants and guests, and shall be maintained, as part of the Common Properties, out of assessments imposed on all Members in accordance with the provisions of Article Seven. Nevertheless, the Board of Directors of the Association shall have the right to form an affiliated association (the "Operator"), which maybe a separate corporation or a division of the Association and assign to it the maintenance and operation of the Recreational facilities and Beach Access, on a non-profit basis and upon such terms and conditions, not inconsistent herewith, as the Board of Directors may deem reasonably necessary . The Operator shall maintain and operate the Recreational Facilities and Beach Access for the benefit of every Member in good standing with the Association. The Association (by action of its Board of Directors) or the Operator, as the case may be, may charge dues and membership Fees sufficient to defray operating costs and require that current payments be made in order for any Member to enjoy the use of the Recreational Facilities and Beach Access. The Operator or the Board of Directors may impose reasonable regulations regarding the use of the Recreational Facilities and Beach Access to insure accessibility, safety, harmony and preservation of the Recreational Facilities and Beach Access. The Association reserves the right to revoke any assignment made by it to an Operator and to assume the operation of the Recreational Facilities and Beach Access, on a membership basis, and to impose Special fees, charges or assessments against the Members with respect thereto.

Section 2. The Declarant retains and reserve the right to offer memberships in the Association or rights-of-use in or to the Recreational Facilities and Beach Access to owners of Lot in the Subdivision known as "Corrected Jay Crest, Sections 1 and 2, a map of which is recorded in Plat Book 5 at Page 37 of the Dare County Registry, as well as to any other selected owners of nearby properties, including their immediate families, but no more than a total of 30 additional memberships in the Association (collectively the "Non-Owners"). The Non-Owners will become Class C Members of the Association as provided for in Article Five, Section 2(c) of this Declaration. Non-Owners will be required to make a one-time payment as an Initiation fee (which shall be determined, and may from time to time be changed, by the Declarant) to the Declarant to offset a portion of the costs of constructing the Recreational Facilities and Beach Access, and, having made such payment, will retain usage rights in and to the Recreational Facilities and Beach Access identical to those

enjoyed by the Owners of OceanCrest Lots or Dwelling Unite subject to this Declaration, subject only to the payment to the Association of assessments or fees as provided for in Article Seven of this Declaration. These usage rights are assignable to, and transferable by will or Intestacy, to any person or entity who subsequently holds fee title to a Non-Owner's property. Failure by a Non-Owner after thirty (30) days written notice to the last known address of the Non-Owner from the Association to pay any delinquent assessments or fees shall cause, at the option of the Board set forth in such notice, a forfeiture of all of any such non-owners membership in the Association and rights of use with respect to the Recreational Facilities and Beach Access, with no refund of any monies previously paid by any such Non-owner.

ARTICLE ELEVEN
CAPTIONS, INTRODUCTIONS AND GENDER

The caption and introductory material herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and neuter gender, and the use of the singular shall be deemed to refer to the plural, and the use of the plural shall be deemed to include the singular, whenever the context so requires.

Vivian Jenkins (SEAL)

Yolanda Jenkins (SEAL)

Charles H. Jenkins, Jr., by his atty

Charles H. Jenkins, Jr. (SEAL)

Charles H. Jenkins, Jr., acting by his attorney-in-fact, Vivian Jenkins

Ronda A. Rattray
Notary Public
Commission Expires 12/21/93

The officers of OceanCrest Property Owners Association, Inc. hereby certify that this Amended and Restated Declaration of Covenants, Conditions and Restrictions was duly adopted and approved by the requisite percentages of owners and lenders.

OceanCrest Property Owners Association, Inc.

By: _____ President

Attest: _____ Secretary

[CORPORATE SEAL]

Boddie Noell Enterprises, Inc. (formerly BNE Land and Development Co.), d/b/a Kitty Hawk Land Company (the "Kitty Hawk Land Company"), a North Carolina corporation, joins in this Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "Amended Declaration") for the purpose of consenting to (and it does hereby consent to) this Amended Declaration and the rights and obligations created thereby; and Kitty Hawk Land Company does hereby subject its rights, title and interests created by or arising from an agreement between Kitty Hawk Land Company and Vivian Jenkins, Charles H. Jenkins, Jr. and Yolanda Jenkins dated the 31st day of January, 1992, a memorandum of which is recorded in Book 790, page 428, Dare County Registry, to the terms and conditions of the Amended Declaration.

Boddie Noell Enterprises, Inc. (formerly BNE Land and Development Co.), d/b/a Kitty Hawk Land Company

By: _____ President

Attest: _____ Asst. Secretary

[CORPORATE SEAL]

STATE OF CALIFORNIA)
COUNTY OF Alameda)

I, Debra L. Konieczny, a Notary Public of said County and State, do hereby certify that Vivian Jenkins (widow) personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal or stamp, this the 23rd day of April, 1993.

Notary Public

My Commission Expires:
January 12 1996

DEBRA L. KONIECZNY
COMM. #951983
Notary Public-California
ALAMEDA COUNTY
My Comm. expires JAN 12,1996

STATE OF GEORGIA
COUNTY OF FULTON

I, Ronda Rattray, a Notary Public of Fulton County, Georgia, do hereby certify that Yolanda Jenkins (single) personally appeared before me this day and acknowledged the due execution of the attached instrument.

Witness my hand and notarial seal or stamp, this 26th day of April, 1993.

Yolanda Jenkins

Ronda Rattray

STATE OF CALIFORNIA)
COUNTY OF Alameda)

BK 861 PG 0057

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that Vivian Jenkins, attorney-in-fact for Charles H. Jenkins, Jr. personally appeared before me this day, and being by me duly sworn, says that she executed the foregoing and annexed instrument for and in behalf of Charles H. Jenkins, Jr., and that his/her authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Dare County, North Carolina, Registry on January 17, 1992, in Book 783, at page 0166, and that this instrument was executed under and by virtue of the authority given by said instrument granting his/her power of attorney; that the said Vivian Jenkins acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said Charles H. Jenkins, Jr.

Witness my hand and official seal, this the 23rd day of April, 1993.

Debra L. Konieczny
Notary Public

My commission expires: January 12, 1996

DEBRA L. KONIECZNY
COMM. #951983
Notary Public-California
ALAMEDA COUNTY
My comm. expires JAN 12,1996

STATE OF NORTH CAROLINA

COUNTY OF Dare, ss:

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Leslie M. Whitley personally came before me this day and acknowledged that she is _____ Secretary of OceanCrest Property Owners Association, Inc., a North Carolina nonprofit 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 himself as its _____ Secretary.

Witness my hand and official seal, this the 30th day of April, 1993.

Donna W. Brown
Notary Public

My commission expires: 10/8/95

DONNA W. BROWN
NOTARY
PUBLIC
Currituck Co., N.C.

STATE OF North Carolina

COUNTY OF Dare, ss:

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Leslie M. Whitley personally came before me this day and acknowledged that She is Asst. Secretary of Boddie Noell Enterprises, Inc. (formerly BNE Land and Development Co.), d/b/a Kitty Hawk Land Company, 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 Vice President, sealed with its corporate seal and attested by herself as its Asst. Secretary.

Witness my hand and official seal, this the 30th day of April, 1993.

Donna W. Brown
Notary Public

My commission expires: 10/8/95

DONNA W. BROWN
NOTARY
PUBLIC
Currituck Co., N.C.

NORTH CAROLINA

DARE COUNTY

North Carolina
County of Dare

The foregoing certificate of Ronda A. Lattray of Fulton Co., GA Debra L. Konieczny of Alameda Co., CA & Donna W. Brown of Currituck Co., NC all Notaries Public
~~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.

Tract One

Being all of the property now or formerly owned by Vivian Jenkins, Yolanda Jenkins, and Charles M. Jenkins, Jr. (hereinafter referred to as the "Jenkins Family") and formerly known as "Hasgraves Beach" (shown on that certain map recorded in Plat Book 2, at page 3, of the Dare County Public Registry) lying east of the east right-of-way line of North Carolina State Highway 12 and bounded (1) on the north by the property known (now or formerly) as the J.H. Bias heirs property; (2) on the east by the western edge of the Atlantic Ocean; and (3) on the south by the town of Southern Shores. For further reference see (i) the "First Tract" in that certain Deed to Dr. Charles M. Jenkins recorded in Book 81, at page 361, of the Dare County Registry.

Tract Two

All of that portion of the property now or formerly owned by the Jenkins Family and being bounded: (1) on the north by the property of the J.H. Bias heirs (now or formerly); (2) on the east by the west right-of-way line of North Carolina State Highway 12; (3) on the south by the north right-of-way line of Angelina Street (as such street is shown on the map of Hargraves Beach recorded in Plat Book 2, at page 3, of the Dare County Registry); and (4) on the west by the eastern edge of Currituck Sound.

Together with all right, title and interest in and to the property lying within the rights-of-way of (i) Angelina Street (lying west of said North Carolina State Highway 12), (ii) Santruce Avenue, as such streets are shown on said map of Hargraves Beach.

For further reference see that certain Plat of OceanCrest recorded in Plat Cabinet C, at pages 164A, 164B, and 164c, of the Dare County Public Registry, reference to which is hereby made.