

## HERON COVE CONDOMINIUM

THIS DECLARATION and the exhibits which are attached hereto and made a part hereof by this reference, are made and executed this 15th day of March, 1988, by DARE COAST PROPERTIES, LTD., a North Carolina Corporation, (hereinafter referred to as "the Declarant"), for itself, its successors, grantees, and assigns, pursuant to the provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

## ARTICLE I

## STATEMENT OF SUBMISSION

Section 1.1 Submission of Property

The Declarant, is the owner in fee simple of certain real property situated in the Town of Nags Head, Dare County, North Carolina, and more particularly described in Exhibit A, which Exhibit A is attached hereto and incorporated herein by reference. It is the intention of the Declarant to submit by this declaration that property described in Exhibit A, (hereinafter referred to as "property"), together with all improvements, easements, rights and appurtenances thereunto belonging in accordance with Chapter 47C of the General Statutes of North Carolina, entitled North Carolina Condominium Act (hereinafter referred to as the "Act"), thereby creating a condominium known as HERON COVE CONDOMINIUM, (hereinafter referred to as "HCC"). The Declarant pursuant to the Act will establish a plan of condominium unit ownership for HCC and will divide the property into twelve (12) units and does hereby designate all such units for separate unit ownership subject, to the provisions of Section 1.2 herein. The Declarant shall sell and convey condominium units to purchasers subject to the covenants, conditions, obligations, and restrictions herein reserved with the maximum land that may be included in this declaration being that described in Exhibit B with the minimum land being subject to this declaration being that described in Exhibit A. The property described in Exhibit A shall also be referred to herein as Phase I of HCC.

NOW, THEREFORE, the Declarant does hereby publish and declare that all the property described in Exhibit A subject to this declaration is held, and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved, subject to the following restrictions, covenants, conditions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of the improvement of such property and the division thereof into condominium units, and shall be deemed to run with the land, and shall be a burden and benefit to the Declarant, its successors and assigns and any person acquiring

and owning an interest in the real property and improvements, their grantees, successors, heirs, administrators, devisees and assigns. Every grantee of any interest in such property by the acceptance of a deed or other conveyance of such interest, whether or not such deed or other conveyance of such interest shall be signed by the grantee or whether or not such person shall otherwise consent in writing, shall be subject to provisions of the Act, and shall be deemed to have assented to the same.

#### Section 1.2 Notice of Intention for Future Submission

The Declarant is the owner of that property described in Exhibit B and it is the intention of the Declarant to submit said property at a later date as Phase II to this declaration and the Act by an amended declaration. The total combined property shall continue being known as HCC. At such time as Phase II is submitted to this declaration, all unit owners in both Phases subject to the declaration shall have the rights and privileges in all the common elements located within all Phases subject to this declaration. Applicable percentages of interest of each unit that is or may become subject to this declaration are determined in accordance with Article VI. For a more particular description of HCC, setting forth Phase I and Phase II, see Page 25 of those plans filed in Unit Ownership Book 4, Sheets 23 - 29, in the office of the Register of Deeds of Dare County, North Carolina, entitled "Exhibit B/Phase II, Need Not Be Built".

#### Section 1.3 Name

The Property shall be known as the HERON COVE CONDOMINIUM.

#### Section 1.4 Condominium Ordinances

The condominium is not subject to any code, real estate use law, ordinance, charter provision, or regulation (i) prohibiting the condominium form of unit ownership, or (ii) imposing conditions or requirements upon developments under a different form of unit ownership. This statement is made pursuant to Section 47C-1-106 of the Act for the purpose of providing marketable title to the units in the condominium.

#### Section 1.5 Alterations of Units

Subject to Article IX of the by-laws, a unit may be altered pursuant to the provisions of Section 47C-2-113(a) and (b) of the Act.

Section 1.6 Limited Common Elements

The limited common elements serving or designed to serve each unit are hereby allocated solely and exclusively to each such unit. The limited common elements are defined in Section 2.1 (15) further described in Section 4.3.

Section 1.7 Unit Allocations

The allocations to each unit of a percentage of undivided interest in the common elements, of votes in the Association, and of a percentage of the common expenses, are as stated in Section 6.1.

Section 1.8 Encumbrances

The liens, defects and encumbrances on the property to which the rights of unit owners and occupants are hereby made subject are set out in Exhibit E.

Section 1.9 Reservation of Special Declarant Rights/The Declarants' Right to Add Real Estate

The Declarant hereby reserves all special rights including the right to add real estate described in Exhibit B to be added to HCC as Phase II. The Declarant expressly reserves the right until the third anniversary of the recordation of this declaration to expand HCC to include Phase II as set forth in Exhibit B and also as set forth in "Exhibit B/Phase II, Need Not Be Built" within those plans filed in Unit Ownership Book 4, Sheets 23 - 29, in the office of the Register of Deeds of Dare County, North Carolina.

ARTICLE II

DEFINITIONS

Section 2.1 Defined Terms

As provided in Section 47C-1-103 of the Act, terms that are not otherwise defined herein shall have the meaning provided therein. The following words, when used in this declaration, shall have the following meanings:

1. "Act" means the North Carolina Condominium Act, Chapter 47C, of the North Carolina General Statutes.

2. "Additional Land" means that land shown in Exhibit B other than Phase I which additional land is also referred to as Phase II for which Phase the Declarant has given notice herein of his intention to add said land to HCC, in the manner hereinafter provided.

3. "Allocated Interests" means the undivided interests in the common elements, the common expense liability, and votes in the Association allocated to each unit.
4. "Assessment" means a unit owner's share of the common expenses assessed against such unit owner and his unit from time to time by the HCC, in the manner hereinafter provided.
5. "Association" means HERON COVE CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., a non-profit organization organized under Chapter 55A of the North Carolina General Statutes.
6. "Board" or Board of Directors" means the Board of Directors of the HERON COVE HOMEOWNERS ASSOCIATION, INC., a corporation not for profit under the laws of the State of North Carolina, created hereunder. The "Director" or "Directors" means a member or members of the Board.
7. "By-laws" means the by-laws for the administration of the HCC, contained in Exhibit D, attached hereto and made a part hereof by this reference.
8. "Common Elements" means all portions of a condominium other than the units.
9. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
10. "Common Expense Liability" means the liability for common expenses allocated to each unit pursuant to Section 47C-2-107.
11. "Condominium" means the condominium created by this declaration.
12. "The Declarant" means DARE COAST PROPERTIES, LTD., a North Carolina Corporation or its successors in interest.
13. "The Declarant Control Period" means the period commencing on the date hereof and continuing until the earlier of (i) the date three years after the date of the first conveyance of a unit to a unit owner other than the Declarant, or (ii) the date upon which the Declarant surrenders control of the condominium, or (iii) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five percent (75%) of the units to unit owners other than the Declarant.
14. "Declaration" means this declaration creating unit ownership and establishing by-laws with covenants, conditions and restrictions for HERON COVE HOMEOWNERS ASSOCIATION, INC.

15. "Limited Common Elements" means a portion of the common elements allocated by the declaration or by operation of Section 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units.

16. "Limited Common Expenses" means expenses separately assessed against more than one but less than all the condominium units generally in accordance with use and said services.

17. "Member" means a unit owner.

18. "Mortgage" means any deed of trust, mortgage, security agreement, and financing statement of any and all other similar instruments given to secure the payment of a debt, by granting a security interest in a unit, its fixtures or contents.

19. "Mortgagee" means any secured party under a security agreement or mortgage, and the beneficiary under or a holder of a deed of trust.

20. "Percentage Interest" means the percentage of undivided interest each unit owner owns in the common areas and facilities as set forth in Section 6.1 of Article VI of this declaration.

21. "Person" means any individual, corporation, partnership, association, trustee, fiduciary, or other legal entity, and shall mean the plural or combination of the same where applicable.

22. "Phase I" means all that land described in Exhibit A of which has been submitted to this declaration.

23. "Phase II" means that portion of land described in Exhibit B which the Declarant has expressed intentions to add at a future date to HCC and which represents the maximum amount of land together with Phase I which will be subjected to this declaration.

24. "Plans" means the plans of the building, and units as set forth by John Simko & Associates and plans further include the site plan as prepared by Quible & Associates, dated March 15, 1988, consisting of six (6) pages and filed in Unit Ownership Book 4, Sheets 23 - 29, in the office of the Register of Deeds of Dare County, North Carolina.

25. "Property" means the real estate described in Exhibit A, and the real estate described in Exhibit B, if added by the Declarant pursuant hereto, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

26. "Special Declarant Rights" means those rights reserved for the benefit of the Declarant to complete improvements indicated on the plats and plans filed with the declaration and to exercise developmental rights of maintaining sales offices, management offices, and signs advertising HCC; to operate a model unit if necessary, to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium as referred to herein as Phase II, to make HCC, a part of a larger condominium by adding Phase II; and to appoint or remove any officer of the Association or any Board member during any period of the declarant control period.

27. "Supplementary Declaration" or "Amended Declaration" means the document filed by the Declarant to include Phase II within the condominium property, in the manner provided hereinafter.

28. "Unit" means a physical portion of the condominium designated for separate unit ownership or occupancy, the boundaries of which are described pursuant to Section 47C-2-105(a)(5) of the Act.

29. "Unit Boundaries" means the boundaries of each unit, both vertical and horizontal planes, as shown on the floor plans, including the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the unit, the undecorated surfaces of the ceiling facing the interior of the unit, and the topmost surfaces of the subflooring, and include the decoration on all such interior panelling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries.

30. "Unit Owner" means the Declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

31. "Unit Owners Association" means HERON COVE HOMEOWNERS ASSOCIATION, INC., a non-profit organization organized under Chapter 55A of the North Carolina General Statutes.

### ARTICLE III

#### BUILDINGS ON THE LAND AND UNIT BOUNDARIES OF PHASE I ADDITIONAL LAND-PHASE II

##### Section 3.1 Location and Dimensions of the Building

The location and dimensions of the building on the land for Phase I are depicted on the site plat prepared by Quible & Associates, P.C., Consulting Engineers and Land Surveyors dated March 15, 1988, said plat being the first page of 7 pages filed in Unit Ownership Book 4, Sheets 23 - 29, in the office of the Register of Deeds of Dare County, North Carolina, which site plan is hereby incorporated herein by reference thereto.

##### Section 3.2 Brief Description of Building and Improvements for Phase I

HCC shall contain one 3-story structure of 12 condominium units.

Phase One of HCC shall contain one, multi-unit structure containing twelve condominium units. The twelve units are arranged with two different basic floor plans, one being an exterior unit and the other being an interior unit. The units are arranged with four on each floor, three stories high on pilings with covered parking underneath as well as twelve individual storage rooms. The building has two exterior stairways, a walkway on each floor, as well as an elevator. The exterior wall construction is made of 3 1/2 inch steel studs with 3 1/2 inch insulation, a 5/8 inch drywall on the interior, a 3/8 inch rockboard on the exterior to which is attached one inch of styrofoam and STO (a product which is a stucco-like, water resistant product). On both the north and the south end there is a cedar shake accent panel. Structurally, the building is of reinforced concrete with a 7 1/2 inch slab making up the floor and ceiling of each unit which is supported by twelve inch columns.

##### Section 3.3 Units for Phase I

The location of units within the building and their dimensions are shown on the "plans," as prepared by John Simko & Associates and that site plan prepared by Quible & Associates,

dated March 15, 1988, consisting of six (6) pages and filed in Unit Ownership Book 4, Sheets 23 - 29, in the office of the Register of Deeds of Dare County, North Carolina, which plans are hereby incorporated herein by reference. All units, their identifying numbers, location, and type are fully depicted on the plats and plans of the aforereferenced. The "size" of each unit is the total number of square feet contained therein determined by reference to the dimensions shown on the plats and plans to which reference should be made for a more particular description. A brief description of the units, their location and size is as follows:

Unit 104 is the first floor, north end unit containing approximately 2,000 square feet which includes living and dining area, kitchen, utility area, entry hall, three bedrooms, two baths, a private exterior balcony of approximately 10 x 30 as well as a private balcony off of the master bedroom on the northeast corner of the unit, which is approximately 10 x 10.

Unit 103 is the interior unit immediately south of Unit 104, also on the first living level. It is approximately 1,900 square feet which includes living and dining area, kitchen, utility area, entry hall, three bedrooms, two and one half baths, and a private ocean front balcony of approximately 10 x 30.

Unit 102 is essentially the same floor plan as Unit 103 and lays immediately south of Unit 103 on the first living level and contains approximately 1,900 square feet including living and dining area, kitchen, utility area, entry hall, three bedrooms, two and one half baths, and a private ocean front balcony of approximately 10 x 30.

Unit 101 is the unit on the south end of the first floor living level which has a typical exterior, end unit floor plan; the reverse of Unit 104. It contains approximately 2,000 square feet of living area which includes living and dining area, kitchen, utility area, entry hall, three bedrooms, two baths, a private balcony on the southwest corner approximately 10 x 10 and a private ocean front balcony of approximately 10 x 30.



Unit 204 is on the second living level immediately above Unit 104 and of the same dimensions and floor plan as Unit 104.

Unit 203 is on the second living level immediately above Unit 103 and of the same dimensions and floor plan as Unit 103.

Unit 202 is on the second living level immediately above Unit 102 and of the same dimensions and floor plan as Unit 102.

Unit 201 is on the second living level immediately above Unit 101 and of the same dimensions and floor plan as Unit 101.

Unit 304 is on the third living level immediately above Unit 204 and of the same dimensions and floor plan as Units 104 and 204.

Unit 303 is on the third living level immediately above Unit 203 and of the same dimensions and floor plan as Units 103 and 203.

Unit 302 is on the third living level immediately above Unit 202 and of the same dimensions and floor plan as Units 202 and 102.

Unit 301 is on the south end on the third living level. It is an exterior unit immediately above Unit 201 and of the same dimensions and floor plan as Units 101 and 201.

Section 3.4 Unit Boundaries for Phase I

Each unit shall include all the space within the boundaries thereof and all those items set forth in Section 47C-2-102 of the Act. A more particular description of the unit boundaries is as follows:

(a) Upper and Lower (horizontal) Boundaries: The upper and lower boundaries of the unit shall be the following boundaries extended to an intersection with the vertical (parametric) boundaries:

(1) Upper Boundary: The horizontal plane of the exposed under side of the concrete floor plank above or the roof

rafters where there is not another unit above to include the loft and vaulted ceiling area.

(2) Lower Boundary: The horizontal plane of the top surface of the undecorated concrete floor slab.

(b) Vertical (parametric) Boundaries: The vertical boundaries of the unit shall be the vertical plane which includes the back surface of the plasterboard of all walls bounding the unit extended to intersections with each other and with the upper and lower boundaries.

(c) The unit shall include the room containing the heating and air-conditioning apparatus, which apparatus shall be part of the unit. Any portion of a utility system or other apparatus serving more than one unit (e.g., pipes, conduits, ducts) which is partially within and partially without the unit, is part of the common elements. Any portion of a utility system serving only one unit which is located outside the unit is a limited common element appurtenant to that unit.

(d) Private balconies are bound horizontally from the core floor slab to the face of the core slab above. Private balconies are bound vertically from the inside face of the rail to the glass wall or structural walls in the East/West axis and from the inside of the rail to the inside of the rail in the North/South direction.

(e) Consistent with the intent of Section 47C-2-102 of the Act, it is the intent hereof that a unit will include all interior drywall, panelling and molding, any surface finish, or wallpaper, and all finished flooring, such as vinyl or ceramic tile floor covering, matting and carpeting, and ceiling joists. Each unit shall be deemed to include all doors, windows and other closures.

### Section 3.5 Units as Built for Phase I

For a more particular description of the units as built, see that filing of the Unit Ownership Act, Book 41, Sheets 23 - 29, in the office of the Register of Deeds of Dare County, North Carolina, which description is controlling over any discrepancies with the units as described herein.

### Section 3.6 Maintenance Responsibilities for Phase I

Notwithstanding the ownership of the various portions of the common elements and the units by virtue of the foregoing boundary description, the provisions of the by-laws shall govern the division of maintenance and repair responsibilities between the unit owner and the Association.

Section 3.7 Relocation of Unit Boundaries and Subdivision of Units

Relocation of boundaries between units and subdivision of units is permitted subject to compliance with the provisions of Article IX of the by-laws and Section 47C-2-113(a) & (b) of the Act.

Section 3.8 Additional Real Estate, Phase II

The Declarant has reserved the right to add that property described in Exhibit B as Phase II HCC, which would include an additional twelve units. The twelve condominium units of Phase II will be substantially similar in style and design as those twelve condominium units of Phase I. Therefore, the brief description of building and improvements set forth in Section 3.2 and of the units set forth in Section 3.3. will be similar to the twelve additional units for Phase II.

The unit boundaries for the units in Phase II will be similar to the unit boundaries as described in Section 3.4 for Phase I.

Sections 3.6 "Maintenance Responsibilities" and 3.7 "Relocation of Unit Boundaries and Subdivision of Units" will also be applicable to the units of Phase II.

ARTICLE IV

COMMON ELEMENTS

Section 4.1 Location of Common Elements

Locations of the common elements to which each unit has direct access are shown on the plat and plans; pursuant to Section 47C-2-109(b) of the Act and include swimming pool and deck, walkway to the ocean, elevator, elevator room, parking, dumpster, signage and all other stairs, walkways and outdoor showers.

Section 4.2 Use of Common Elements

Each unit owner shall have the right to the common elements in accordance with the purpose for which they are intended without hindering the exercise of or encroaching upon the rights of other unit owners. The Board shall, if any question arises, determine the use of the common elements. The Board shall have the right to promulgate rules and regulations limiting the use of common elements to unit owners and their guests as well as to provide for the exclusive use of a part of the common elements by a unit owner and his guests for special occasions, which exclusive use may be conditioned upon, among other things,

payment of a fee. In accordance with the provisions of this declaration and by-laws and reasonable rules and regulations of the Board, any unit owner may delegate the right to use common elements to immediate family living in the unit, to a limited number of guests or to tenants who reside in the condominium unit.

#### Section 4.3 Limited Common Elements

A unit owner shall be entitled to the exclusive use or use with others necessarily served thereby, of the limited common elements appurtenant to such unit and so designated in the plans. Limited common elements shall not be construed or interpreted to be separate and apart from the common elements in general, being limited only with respect to the reserved use thereof by the unit or units served. Limited common elements shall include, if appropriate, all balconies, patios (concrete slabs), entrance areas, any lighting facilities, equipment and wiring installed to illuminate the general common elements exclusive of any individual unit electric meter, all masonry walls, storage units, storage lockers on ground area east of parking space # 14, and any area designated on the plans as a limited element, or set out by the Board of Directors as a limited element for a unit.

Exclusive use of the limited common elements may be delegated by a unit owner to immediate family members, guests, or tenants who reside in the unit. Unit owners may place plants, furniture, or other similar items within the limited common elements adjacent or appurtenant to the unit, subject to reasonable rules and regulations duly adopted by the Board with respect thereto. No unit owner shall build or construct any type of storage or workshop facility or similar structure within the limited common elements unless prior approval is obtained from the Board of Directors.

#### Section 4.4 Additional Limited Common Elements

The Board shall have the right to approve, from time to time, changes in existing limited common elements, and to approve additional or new limited common elements, provided, that such additional limited common elements shall be immediately adjacent to the unit to which it shall appertain.

### ARTICLE V

#### EASEMENTS

#### Section 5.1 Use and Enjoyment

Every unit owner, the unit owner's family living in the unit, tenants, and permitted guests, shall have a right and easement of use and enjoyment in and to the common elements,

(including the right of access, ingress, and egress to and from his unit over those portions of the property designated for such purposes), and such easement shall be appurtenant to and shall pass with the title to every unit, subject to the following provisions;

(a) The right of the Board of Directors to control the use and enjoyment thereof as provided in this declaration, and in the duly adopted rules and regulations of the Association, which shall include, but not be limited to, the right of the Board to limit use and enjoyment thereof to the unit owners, and their respective families living in the unit, tenants, and guests, as well as to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by a unit owner, his family, tenants, and guests; and

(b) The right of the Board of Directors to limit the number of guests of unit owners; and

(c) The right of the Board to suspend the voting rights and rights to use of the recreational facilities by a unit owner, his tenants and guests, for any period of time during which an assessment against his unit remains unpaid or any separate charge incurred by such unit owner for use of the recreational facilities remains unpaid, or for infraction of its published rules and regulations.

Section 5.2 Maintenance and Repair

There shall be an easement through the units and the common elements for the installation, maintenance, repair and replacement of units and the common elements. Use of this easement shall be only during normal business hours, except that access may be had at any time in the case of emergency.

Section 5.3 Structural Support

Every portion of a unit or the common elements which contributes to the structural support of another unit shall be burdened with an easement of structural support.

Section 5.4 Encroachments

An easement for encroachment shall be granted pursuant to the provisions of Section 47C-2-114 of the Act.

Section 5.5 Utilities

There shall be a general easement upon, across, above and under all the property for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, the construction, operation and maintenance

of all utility lines, pipes, sewerage lines, septic tanks, waste treatment facilities, pumps, drain lines, and facilities related thereto, water, telephone, electricity, cable television, which said shall inure to the benefit of all unit owners. Should any party furnishing any service covered by this general easement require a specific easement by separate, recordable document, the Declarant, or the Board of Directors of the Association, as the case may be, shall have the right to grant such easement under the terms hereof.

#### Section 5.6 Easement to Facilitate Sales

The Declarant reserves the right to use any units owned by the Declarant as models, management offices or sales offices until such time as the Declarant conveys the title thereto to unit owners. The Declarant reserves the right to relocate the same from time to time within the property; upon relocation or sale of a model, management office or sales office, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the property and may be relocated or removed, all at the sole discretion of the Declarant.

#### Section 5.7 Declarants' Right to Grant Easements

The Declarant shall have the right, prior to the termination of the declarant control period, to grant and reserve easements and rights-of-way through, under, over and across the property shown in Exhibit A for construction purposes and for the installation, maintenance and inspection of the lines and appurtenances of public water, sewer, drainage, electricity, telephone, cable television, and other utilities. The Declarant also reserves the right, prior to the termination of the declarant control period to grant and reserve any other easements and rights-of-way required to facilitate sharing of services between the condominium and any portion of the property not then part of the condominium; provided, however, that the unit owners of such other portions bear a pro-rata share of the cost thereof in proportion to the relative number of dwelling units on such portion and on the condominium. The Declarant expressly reserves, the right-of-way and easement across all properties, roads, common areas, facilities, limited common areas and facilities necessary for the construction of Phase II of HCC.

ARTICLE VI

ALLOCATION OF COMMON ELEMENTS, COMMON INTERESTS,  
COMMON VOTES AND COMMON EXPENSE LIABILITIES

Section 6.1 Allocation of Common Elements, Common Interests,  
Common Votes and Common Expense Liabilities

The allocations to each unit of a percentage of undivided interest in the common elements, of a percentage of the common expenses, and of votes in the Association are as hereinafter set forth:

| <u>Unit No.</u> | <u>Percentage of Undivided Interest In Common Elements</u> | <u>Percentage Of Common Expenses</u> | <u>Votes In Association</u> |
|-----------------|--|--------------------------------------|-----------------------------|
| 101             | 1/12th   | 1/12th                               | 1                           |
| 102             | 1/12th   | 1/12th                               | 1                           |
| 103             | 1/12th   | 1/12th                               | 1                           |
| 104             | 1/12th   | 1/12th                               | 1                           |
| 201             | 1/12th   | 1/12th                               | 1                           |
| 202             | 1/12th   | 1/12th                               | 1                           |
| 203             | 1/12th   | 1/12th                               | 1                           |
| 204             | 1/12th   | 1/12th                               | 1                           |
| 301             | 1/12th   | 1/12th                               | 1                           |
| 302             | 1/12th   | 1/12th                               | 1                           |
| 303             | 1/12th   | 1/12th                               | 1                           |
| 304             | 1/12th   | 1/12th                               | 1                           |
|                 |  |                                      | <u>Total = 12 Votes</u>     |

Section 6.2 Formula Used to Establish Allocations

The allocation of undivided interest in the common elements and of the common expenses is according to that percentage of votes given in the Association. The votes in the Association are equally allocated to all units and this applies to Phase I and also to Phase II in the event that Phase II is submitted.

Section 6.3 Allocation of Common Elements, Common Interests,  
Common Votes and Common Expense Liabilities in the  
Event of the Submission of Phase II

In the event that Phase II is hereafter developed as part of this declaration, the allocations to each unit of a percentage of undivided interest of the common elements, of a percentage of the common expenses, and of votes in the Association are as hereinafter set forth:

| <u>Unit No.</u> | <u>Percentage of Undivided Interest In Common Elements</u> | <u>Percentage Of Common Expenses</u> | <u>Votes In Association</u> |
|-----------------|--|--------------------------------------|-----------------------------|
| 101             | 1/24th   | 1/24th                               | 1                           |
| 102             | 1/24th   | 1/24th                               | 1                           |
| 103             | 1/24th   | 1/24th                               | 1                           |
| 104             | 1/24th   | 1/24th                               | 1                           |
| 201             | 1/24th   | 1/24th                               | 1                           |
| 202             | 1/24th   | 1/24th                               | 1                           |
| 203             | 1/24th   | 1/24th                               | 1                           |
| 204             | 1/24th   | 1/24th                               | 1                           |
| 301             | 1/24th   | 1/24th                               | 1                           |
| 302             | 1/24th   | 1/24th                               | 1                           |
| 303             | 1/24th   | 1/24th                               | 1                           |
| 304             | 1/24th   | 1/24th                               | 1                           |
| 101-B           | 1/24th   | 1/24th                               | 1                           |
| 102-B           | 1/24th   | 1/24th                               | 1                           |
| 103-B           | 1/24th   | 1/24th                               | 1                           |
| 104-B           | 1/24th   | 1/24th                               | 1                           |
| 201-B           | 1/24th   | 1/24th                               | 1                           |
| 202-B           | 1/24th   | 1/24th                               | 1                           |
| 203-B           | 1/24th   | 1/24th                               | 1                           |
| 204-B           | 1/24th   | 1/24th                               | 1                           |
| 301-B           | 1/24th   | 1/24th                               | 1                           |
| 302-B           | 1/24th   | 1/24th                               | 1                           |
| 303-B           | 1/24th   | 1/24th                               | 1                           |
| 304-B           | 1/24th   | 1/24th                               | 1                           |
|                 |  |                                      | <u>Total = 24 Votes</u>     |

Section 6.4 Consent to Allocations as Set Forth in Sections 6.1, 6.2 and 6.3

By acceptance of a deed of a condominium in HCC, each unit owner for himself, his heirs, successors and assigns, agrees and consents that the Declarant, without need for further consent or joinder of any unit owner, may add Phase II as described in Exhibit B to HCC upon the recording by the Declarant of a supplementary declaration.

Section 6.5 No Obligations

Nothing contained in this declaration shall be deemed to impose upon the Declarant or its successors or assigns any obligation of any nature to build, construct, or provide any building except for those shown to be located in Phase I.



ARTICLE VII

ADMINISTRATION OF THE CONDOMINIUM BY  
HERON COVE HOMEOWNERS ASSOCIATION, INC.

The Association shall administer the operation and management of HCC, and undertake and perform all acts and duties incident thereto in accordance with the terms of its articles of incorporation and by-laws. A true copy of these articles of incorporation and by-laws is annexed hereto and expressly made a part hereof as Exhibits C and D, respectively, which documents are incorporated herein by reference as if fully set out word for word. Including but not limited to all matters concerning the units, the Association, the Board of Directors, the Officers, the office of HCC, including the determination of common expenses, and assessments against unit owners, payment of common expenses, collection of assessments, statement of common expenses, maintenance, repair, replacement, and other common expenses, additions, alteration or improvements by the Board of Directors and unit owners, restrictions on use of units; rules and regulations, rights of access, utility charges, parking spaces, all matters of insurance, all matters relating to repair and reconstruction after fire or other casualty, all mortgages, and rights of mortgagees; matters of compliance and default; and amendments to by-laws are all set forth within the by-laws and attached hereto in Exhibit D.

The unit owners of each condominium unit shall automatically become members of said Association upon his, their or its acquisition of an unit ownership interest in title to any condominium unit and its appurtenant undivided interest in common property, and the membership of unit owners shall terminate automatically upon unit owners being divested of such unit ownership interest and the title to such condominium unit, regardless of the means by which such unit ownership shall be divested. The person, firm or corporation holding the lien, mortgage or other encumbrance upon any condominium unit shall be entitled by virtue of such lien, mortgage or other encumbrance to membership in said Association or to any of the rights or privileges of such membership. The Association, shall have and is hereby granted the authority and power to enforce provisions of this declaration and specifically to levy and to collect assessments in the manner and provisions as stated under "Operation of the Property" in Article VII of the by-laws as stated in Exhibit D, and to adopt, promulgate and enforce such rules and regulations governing the use of the condominium units and common property as Board of Directors of said Association may deem to be in the best interest of the Association.

## ARTICLE VIII

### RIGHTS OF FIRST MORTGAGEES; VA, FNMA AND PHLMC PROVISIONS

The following provisions shall take precedence over all other provisions of this declaration and the by-laws:

#### Section 8.1 Amendments During The Declarant Control Period

Any amendments to this declaration or to the by-laws during the declarant control period excepting that supplementary declaration for the purpose of adding Phase II shall be subject to the prior approval of the elected representative of a majority of the holders of first mortgage position FNMA/PHLMC secured loans provided, however, that, if said representative or such lender(s) fails to respond to a written request for approval within thirty (30) days of said request, approval shall be deemed to have been given.

#### Section 8.2 Availability of Condominium Documents, Books, Records and Financial Statements

The Association shall, upon request and during normal business hours, make available for inspection by unit owners and the first mortgagees and the insurers and guarantors of a first mortgage on any unit, current copies of the declaration, the by-laws, other rules and regulations governing the condominium and the books, records and financial statements of the Association. The Association shall provide an audited financial statement for the preceding fiscal year if requested in writing by a first mortgagee or insurer or guarantor of a first mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of units, current copies of the declaration, by-laws, other rules and regulations governing the condominium, and the most recent annual audited financial statement (if one is prepared).

#### Section 8.3 Successors Personal Obligation for Delinquent Assessments

The personal obligation for assessments which are delinquent at the time of transfer of a unit shall not pass to the successors in title or interest to said unit unless said delinquent assessments are expressly assumed by them.

#### Section 8.4 Rights of Action

The Association and any aggrieved unit owner shall have a right of action against the Association for failure to comply with the regulations, and decisions of the Association made

pursuant to authority granted to the Association in this declaration and the by-laws.

Section 8.5 Management and Other Agreements

Any management agreement between the Declarant or the Association and a professional manager or any other agreement providing for services of the developer, sponsor, builder or the Declarant shall be terminable by either party thereto without cause and without payment of a termination fee upon not more than thirty (30) days prior written notice and shall not exceed a term of three (3) years, subject to renewal by the consent of both parties.

Section 8.6 Right of First Refusal

The right of a unit owner to sell, transfer, mortgage or otherwise convey his interest in his unit shall not be subject to any right of first refusal.

Section 8.7 Consent of First Mortgagees

This Section 8.7 shall be effective only if, at the time this Section would apply, at least one unit is subject to financing. Any decision to terminate the condominium for reasons other than substantial destruction or condemnation of the property shall require the prior written consent of eligible mortgage holders, as defined in Section 8.9 hereof, representing at least 67% of the votes allocated to units subject to first mortgages held by eligible mortgage holders, or such greater requirements specified by the Act. Except for any amendment to the declaration made for the purpose of adding real estate to the condominium in accordance with the provisions hereof, any amendment to the declaration or by-laws which changes any of the following shall require the prior written consent of unit owners holding at least 67% of the total votes in the Association and of eligible mortgage holders representing at least 51% of the votes allocated to units subject to first mortgages held by eligible mortgage holders, or such greater requirements specified by the Act or hereunder:

- (a) voting rights;
- (b) assessments, assessment liens or subordination of such liens;
- (c) reserves for maintenance, repair and replacement of common elements;
- (d) responsibility for maintenance and repairs;

- (e) reallocation of interests in the common elements or limited common elements or rights to their use;
- (f) boundaries of any unit;
- (g) convertibility of units into common elements or common elements into units;
- (h) expansion or contraction of the condominium or the addition, annexation or withdrawal of property to or from the condominium;
- (i) insurance or fidelity bonds;
- (j) leasing of units;
- (k) imposition of any restrictions on a unit owner's right to sell, transfer or otherwise convey his unit;
- (l) a decision by the Association to establish self-management when professional management had been required previously by any eligible mortgage holder;
- (m) restoration or repair of the condominium (after damage or destruction or partial condemnation) in a manner other than that specified in this declaration or the by-laws;
- (n) any action to terminate the legal status of the condominium after substantial damage or destruction or condemnation; or
- (o) any provisions that expressly benefit first mortgagees or insurers or guarantors of first mortgages.

Section 8.8 Consent of First Mortgagees or Unit Owners :

This Section 8.8 shall be effective only if, at the time this Section would apply, at least one unit is subject to FNMA/FHLMC financing. Unless first mortgagees holding at least 66 2/3% of the votes allocated to first mortgagees (except first mortgagees having one vote per unit financed), or such higher percentage as is required by law, of the first mortgagees (based upon one vote for each first mortgage owned) and unit owners (other than the Declarant) holding at least 66 2/3% of the total votes in the Association have given their prior written approval, or such greater requirements specified in the Act or hereunder have been satisfied, the Association shall not be entitled to:

- (a) by act or omission, seek to abandon or terminate the condominium;

- (b) except in the case of adding the real estate of Exhibit B, change the pro-rata interest or obligations of any unit for the purpose of:
  - (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or
  - (ii) determining the pro-rata share of unit ownership of each unit in the common elements;
- (c) partition or subdivide any unit;
- (d) except in the case of adding the real estate of Exhibit B, by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements shall not be deemed a transfer within the meaning of this clause);
- (e) use hazard insurance proceeds for losses to any part of the condominium (whether to units or to common elements) for other than repair, replacement or reconstruction thereof.

#### Section 8.9 Notice

Each first mortgagee and each insurer or guarantor of a first mortgage, upon written request stating its name and address and describing the unit encumbered by the first mortgage, held, insured or guaranteed, shall be entitled to timely written notification by the Association of (i) any proposed action which requires consent of a specified percentage of first mortgagees; (ii) any condemnation or casualty loss that affects either a material portion of the condominium or the unit securing its first mortgage; (iii) any 60-day delinquency in the payment of assessments or charges owed by the unit owner of the unit on which the first mortgagee held its first mortgage or in the performance of any obligation under this declaration or the by-laws by said unit owner; or (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Each first mortgagee who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of eligible mortgage holders shall be considered an "eligible mortgage holder." With respect only to non-material amendments (which excludes items (a) to (o) of Section 8.7), such as for the correction of technical errors or for clarification, any first mortgagee who receives a written request by the Association, or any unit owner, to approve an addition or amendment to the declaration or by-laws who does not deliver or post to the

requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 8.10 Assessments

Assessments shall be due and payable in monthly installments. As provided in Article VIII of the by-laws and as legally required by Section 47C-3-115 of the Act, the Declarant shall pay all accrued expenses of the condominium until assessments are levied against the units. An assessment shall be deemed levied against a unit upon the giving of notice by the Board to a member of the Association who is a unit owner of that unit. Unit owners shall have no obligation to pay monthly assessments until an assessment is levied. Assessments will begin at such time as the Board elects.

Section 8.11 Rights of First Mortgagee; Insurance Proceeds or Condemnation Awards

With respect to first mortgages held by or for the benefit of FNMA/FHLMC, no provision of this declaration or the by-laws shall be deemed to give a unit owner, or any other party, priority over any rights of a first mortgagee pursuant to its first mortgage on said unit owner's unit, in the case of a distribution to said unit owner of insurance proceeds or condemnation awards for losses to or a taking of units and/or common elements.

Section 8.12 Phase II: Common Element Interests; Reallocation

If Phase II is added, the unit ownership interest in the common elements and the liability for common expenses for each unit shall be reallocated in proportion to the area of each unit to the area of all units and the voting rights in the Association shall be reallocated on the basis of equality. The effective date for the assignment of assessments to the units added to the condominium shall be the date the Board levies an assessment against said units. All improvements intended to be located within Phase II and added to the condominium shall be substantially completed prior to the addition of Phase II and submission of Phase II to HCC.

ARTICLE IX

CONDEMNATION

If all or any part of the property shall be damaged or destroyed, the same shall be repaired or replaced, and proceeds of insurance shall be used and applied in accordance with provisions of Section 47C-3-113(d) and (g) of the Act.

## ARTICLE X

## AMENDMENT

This declaration may be amended only in strict compliance with the Act, including, without limitation, Sections 47C-2-108 and 47C-2-117 of the Act, except that no amendment altering or impairing special declarant rights may be made without the written consent of the Declarant. The Declarant has the right to file a supplementary declaration for the purposes set forth in Section 1.9 which amendment may be filed within the time allowed therein without any necessary joinder.

## ARTICLE XI

## TERMINATION

The condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act.

## ARTICLE XII

## GENERAL PROVISIONS

Section 12.1 Covenants Running with the Land

All provisions of this declaration shall be construed to be covenants running with the land, and with every part thereof and interest therein including, but not limited to, every unit and the appurtenances thereto; and each and every provision of this declaration shall bind and inure to the benefit of all unit owners and claimants of the land or any part thereof or interest therein and their heirs, executors, administrators, successors and assigns, including the Declarant herein.

Section 12.2 Duration

So long as North Carolina law limits the period during which covenants restricting lands to certain uses may run, it shall be the duty of the Board of Directors of the Association to enforce the covenants contained herein, as amended from time to time, to be extended when necessary by filing a document bearing the signature of a majority of the unit owners reaffirming and newly adopting the declaration and covenants running with the land. Such adoption by a majority shall be binding on all, and each unit owner, by acceptance of a deed therefore, is deemed to agree that the declaration and covenants may be extended as provided in this Section 12.2.

Section 12.3 Articles of Incorporation and By-Laws of Heron Cove Homeowners Association, Inc.

A true copy of the articles of incorporation and by-laws of the Association, which together with this declaration shall govern the administration of the condominium, is attached hereto as Exhibits C and D, and by reference, is made a part hereof as if fully set out word for word.

Section 12.4 Interpretation

The provisions of this declaration and by-laws shall be liberally construed to effectuate its purpose in creating a uniform plan for the development and operation of the condominium property.

Section 12.5 Law Controlling

This declaration and the by-laws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina, provided, however, that if there are conflicts or inconsistencies between the Act, and this declaration (in that order) the Act shall prevail and the unit owners covenant to vote in favor of such amendments as will remove such conflict or inconsistencies, except that where the Act, the declaration, or the by-laws conflict and the provisions of the Act are merely enabling and not mandatory, the provisions of the declaration or the by-laws shall control.

Section 12.6 Gender and Grammar

The singular, whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereto apply to corporations or individuals, men or women, shall in all cases be assumed as through in each case fully expressed.

Section 12.7 Captions

Captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the declaration or the intent of any provision hereof.

Section 12.8 Non-Waiver

The failure of the Declarant, Board of Directors, or any unit owner, or their respective legal representatives, heirs, successors and assigns, to enforce any restriction contained in this declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.



Section 12.9 Severability

All of the covenants, conditions, and by-laws, restrictions and reservations contained in this declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof is void, unlawful or unenforceable shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations or clause or phrase thereof.

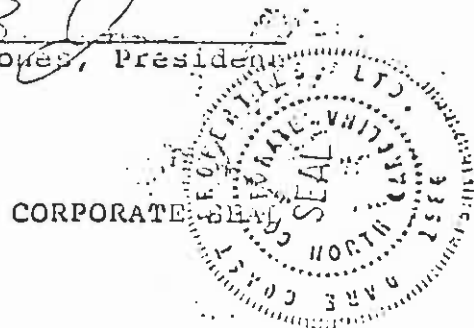
IN WITNESS WHEREOF, the Declarant has caused this declaration to be signed and sealed by its duly authorized officers, as its act and deed, the day and year hereinafter set out.

DARE COAST PROPERTIES, LTD.

By: Gordon B. Jones  
Gordon B. Jones, President

ATTEST

By: Helen M. Jones  
Helen M. Jones, Secretary



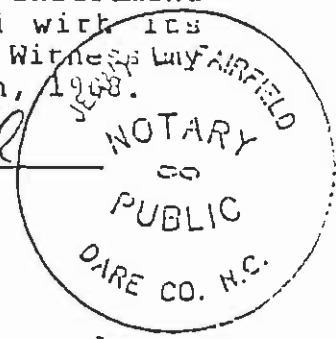
NORTH CAROLINA  
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Helen M. Jones personally came before me this day and acknowledged that she is Secretary of DARE COAST PROPERTIES, LTD. a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Secretary. Witness my hand and official stamp or seal, this 15th day of March, 1988.

11-22-92  
My Commission Expires

James L. Fairfield  
Notary Public

SEAL/STAMP



The undersigned Trustee pursuant go to those release provisions of Article II of that Construction Loan Agreement dated May 1, 1986 by and between DARE COAST PROPERTIES, LTD., a North Carolina Corporation and GREAT ATLANTIC SAVINGS BANK, F.S.B. the same being the beneficiary of that Deed of Trust recorded in Deed Book 507 at Page 338 in the office of the Register of Deeds of Dare County, North Carolina hereby joins in the execution of this declaration of unit ownership for the

purpose of consenting to the terms, conditions and covenants in the foregoing declaration and the by-laws which are referred to therein and hereby agrees that the lien of the Deed of Trust, any of the individual covenants contained therein and any and all interest of GREAT ATLANTIC SAVINGS BANK, F.S.B. as mortgagee or holder of that Deed of Trust are subject to the terms, conditions and covenants contained in said declaration.

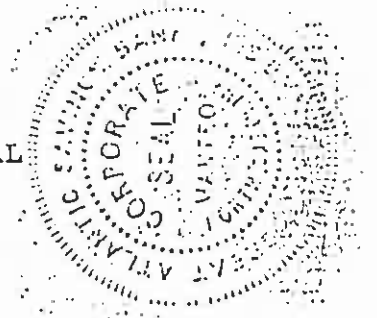
IN WITNESS WHEREOF, this consent has been executed in the name of the said mortgage holder, the 15th day of March, 1988.

GREAT ATLANTIC SAVINGS BANK, F.S.B.

BY: Willie Horne (SEAL)  
Willie Horne, President

ATTEST:  
BY: Hanna Craghead  
Secretary

CORPORATE SEAL

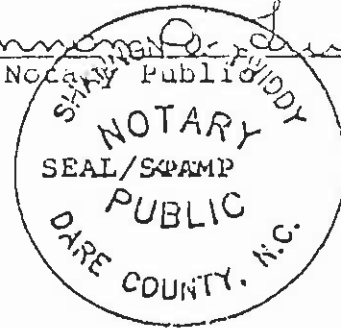


NORTH CAROLINA  
DARE COUNTY

I, a Notary Public of the County and State aforesaid; certify that Willie Horne personally came before me this day and acknowledged that (s)he is Secretary of GREAT ATLANTIC SAVINGS BANK, F.S.B., a North Carolina Corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him/her as its Secretary. Witness my hand and official stamp or seal, this 15th day of March, 1988.

November 24, 1992  
My Commission Expires

Shannon O. Fiddy  
Notary Public



DARE COUNTY NORTH CAROLINA  
The foregoing Certificate(s) of Jenny L. Fairfield and Shannon O. Fiddy  
Notary Publics of Dare County, N.C.

are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Dorris A. Fry Register of Deeds for Dare County  
Nancy B. Scarborough Assistant Register of Deeds



ATLANTIC OCEAN

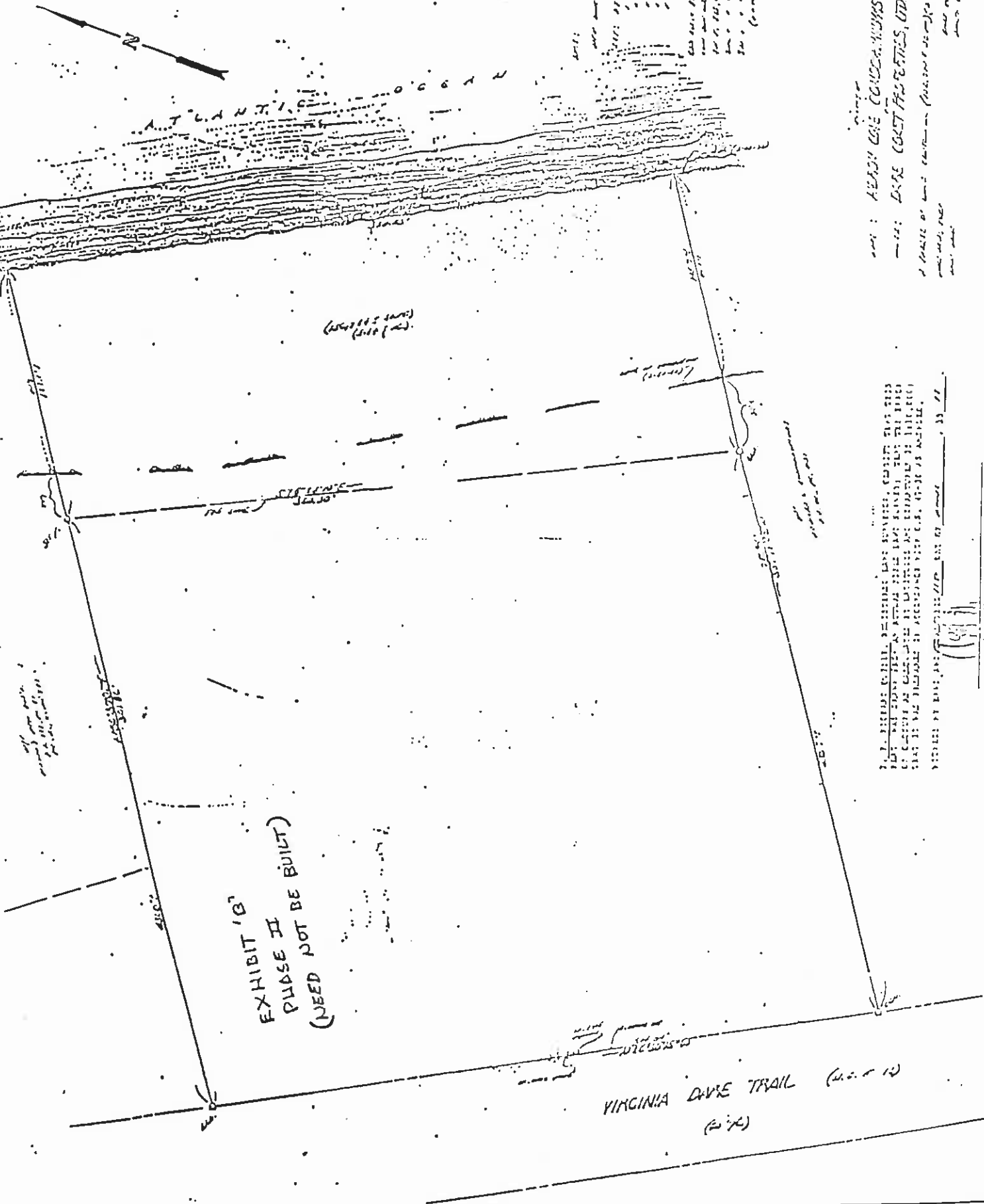


EXHIBIT 'G'  
PHASE II  
(NEED NOT BE BUILT)

VIRGINIA DAVE TRAIL (4.5 x 10)  
(21 x)

|         |                  |
|---------|------------------|
| DATE    | 1/11/77          |
| BY      | J. J. [unclear]  |
| FOR     | USE OF [unclear] |
| SCALE   | AS SHOWN         |
| PROJECT | [unclear]        |
| SHEET   | 1 OF 1           |

DATE: 1/11/77  
BY: J. J. [unclear]  
FOR: USE OF [unclear]  
SCALE: AS SHOWN  
PROJECT: [unclear]  
SHEET: 1 OF 1

NOTED: THE DISTANCE BETWEEN THE POINTS SHOWN ON THIS PLAN IS NOT THE ACTUAL DISTANCE BETWEEN THE POINTS. THE DISTANCE BETWEEN THE POINTS IS THE DISTANCE BETWEEN THE POINTS AS SHOWN ON THIS PLAN. THE DISTANCE BETWEEN THE POINTS IS THE DISTANCE BETWEEN THE POINTS AS SHOWN ON THIS PLAN.

DATE: 1/11/77  
BY: J. J. [unclear]  
FOR: USE OF [unclear]  
SCALE: AS SHOWN  
PROJECT: [unclear]  
SHEET: 1 OF 1

BK 72 : 0180

Prepared by & Return To:  
Daniel D. Khoury, Attorney  
P. O. Box 1584  
Kill Devil Hills, N. C. 27848

AMENDMENT TO DECLARATION

FILED

AUG 27 PM 4 48

OF

HERON COVE CONDOMINIUM

DARE COUNTY, N.C.

THIS AMENDMENT TO DECLARATION made this 17th day of July, 1990, by DARE COAST PROPERTIES, LTD., a North Carolina Corporation (hereinafter referred to as the "Declarant"), for itself, its successors, grantees, and assigns, pursuant to the provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

**W I T N E S S E T H:**

WHEREAS, the Declaration of Unit Ownership for Heron Cove Condominium (said Declaration hereinafter being referred to as "Declaration" and Heron Cove Condominium hereinafter being referred to as "HCC") is recorded in Deed Book 562 at Page 390 in the Office of the Register of Deeds of Dare County, N.C. which Declaration submitted Phase I of HCC consisting of twelve condominium units to the Declaration of HCC. The location of said units and their dimensions are depicted on those plans prepared by John Simko & Associates and that site plan prepared by Quible & Associates, P.C., dated March 15, 1988 consisting of six pages and filed in Unit Ownership Book 4, Sheets 23 - 29 in the Office of the Register of Deeds of Dare County, North Carolina; and

WHEREAS, Declarant reserved developmental rights for the expansion of HCC by adding Additional Real Estate to HCC as further described in "Exhibit B" to the Declaration, said Exhibit being recorded in Deed Book 562 at Page 417 in the Office of the Register of Deeds of Dare County, North Carolina; and

WHEREAS, Declarant has now completed construction of Phase II of HCC consisting of an additional twelve condominium units and pursuant to that Notice of Intention set forth in Section 1.2 of the Declaration, Declarant by this Amendment to Declaration now wishes to submit Phase II to HCC; and

WHEREAS, by reservation of Special Declarant Rights, the Declarant has the right during the Declarant Control Period to make certain necessary amendments to the Declaration for the purpose of adding additional buildings in Phases as set forth in the condominium plan of unit ownership for HCC; and

WHEREAS, every Grantee of every interest in such property of HCC by the acceptance of a Deed or conveyance of any interest, whether or not such Deed or other conveyance of such interest shall be signed by the Grantee, shall be deemed by their acceptance of a Deed to a condominium unit in HCC to have consented to the powers of amendment therein reserved by Declarant and to any amendments previously or thereafter executed by Declarant pursuant thereto; and

WHEREAS, the Statement of Submission further provides that upon such amendment the undivided interest appurtenant to each condominium unit shall be determined in accordance with the provisions of Article VIII, Section 8.12 of the Declaration; and

WHEREAS, Declarant now desires to add Phase II to the Declaration consisting of twelve additional condominium units further described herein, and pursuant to the provisions of HCC to amend the Declaration as provided for therein to accomplish such incorporation and addition;

NOW, THEREFORE, Declarant hereby certifies as follows:

(1) Declarant is the owner of the land described in "Exhibit A" to this Amendment to Declaration, and said land is that land previously referred to as "Additional Land" in the Declaration of HCC and Section 1.1 of the Declaration is hereby amended to add that property in "Exhibit A" referred to as Phase II to the Declaration of HCC.

(2) That Section 3.1 "Location and Dimensions of the Building" is hereby amended as the same relates to Phase II as follows:

Section 3.1 Location and Dimensions of the Building of Building B of Phase II

Location and Dimensions of the Building on the land for Phase II are depicted on the site plan prepared by Quible & Associates, P.C., Consulting Engineers and Land Surveyors dated July 17, 1990, said plat being the first page of 11 pages filed in Unit Ownership File 4, Page 351, in the Office of the Register of Deeds of Dare County, North Carolina which site plan is incorporated herein by reference and is controlling over any discrepancies of the units as may be described herein.

(3) That Section 3.2 "Brief Description of Building and Improvements for Phase I" is hereby amended as the same applies to Phase II as follows:

Section 3.2 Brief Description of Building and Improvements for Phase II

Phase II of HCC contains one, multi-unit structure containing twelve condominium units. The twelve units are arranged with two different basic floor plans, one being an exterior unit and the other being an interior unit. The units are arranged with four on each floor, three stories high on pilings with covered parking underneath as well as twelve individual storage rooms. The building has two exterior stairways, a walkway on each floor, as well as an elevator. The exterior wall construction is made of 3 1/2 inch steel studs with 3 1/2 inch insulation, a 5/8 inch drywall on the interior, a 3/8 inch rockboard on the exterior to which is attached ICC one inch of styrofoam and STO (a product which is a stucco-like, water resistant product). On both the North and the South end there is a cedar shake accent panel. Structurally, the building is reinforced concrete with a 7 1/2 inch slab making up the floor and ceiling of each unit which is supported by twelve inch columns.

(4) Section 3.3 "Units for Phase I" is hereby amended as the same applies to Phase II as follows:

The location of units within the building B and their dimensions are shown on that site plan prepared by Quible & Associates, P.C. filed in Unit Ownership File 4, Page 351 in the Office of the Register of Deeds of Dare County, North Carolina which site plan depicts all twelve units, their identifying numbers, and their location. A brief description of the units, their location and sizes are as follows:

Unit 104B is the first floor, North end unit containing approximately 2,000 square feet which includes living and dining area, kitchen, utility area, entry hall, three bedrooms, three baths, a private exterior balcony of approximately 10 x 30 as well as a private balcony off of the master bedroom on the Northeast corner of the unit, which is approximately 10 x 10.

Unit 103B is the interior unit immediately South of Unit 104B, also on the first living level. It is approximately 1,900 square feet which includes living and dining area, kitchen, utility area, entry hall, three bedrooms, two and one half baths, and a private ocean front balcony of approximately 10 x 30.

Unit 102B is essentially the same floor plan as Unit 103B and lays immediately South of Unit 103B on the first living level and contains approximately 1,900 square feet including living and dining area, kitchen, utility area,

entry hall, three bedrooms, two and one half baths, and a private ocean front balcony of approximately 10 x 30.

Unit 101B is the unit on the South end of the first floor living level which has a typical exterior, end unit floor plan; the reverse of Unit 104B. It contains approximately 2,000 square feet of living area which includes living and dining area, kitchen, utility area, entry hall, three bedrooms, three baths, a private balcony on the Southwest corner approximately 10 x 10 and a private ocean front balcony of approximately 10 x 30.

Unit 204B is on the second living level immediately above Unit 104B and of the same dimensions and floor plan as Unit 104B.

Unit 203B is on the second living level immediately above Unit 103B and of the same dimensions and floor plan as Unit 103B.

Unit 202B is on the second living level immediately above Unit 102B and of the same dimensions and floor plan as Unit 101B.

Unit 201B is on the second living level immediately above Unit 101B and of the same dimensions and floor plan as Unit 101B.

Unit 304B is on the third living level immediately above Unit 204B and of the same dimensions and floor plan as Units 104B and 204B.

Unit 303B is on the third living level immediately above Unit 203B and of the same dimensions and floor plan as Units 103B and 203B.

Unit 302B is on the third living level immediately above Unit 202B and of the same dimensions and floor plan as Units 202B and 102B.

Unit 301B is on the South end on the third living level. It is an exterior unit immediately above Unit 201B and of the same dimensions and floor plan as Units 101B and 201B.

For a more particular description of the Units As Built, see those plats depicting the same dated August 17, 1990 and certified by Mark S. Bissell, P.E. which plats are filed in Unit Ownership File 4 at Pages 357 - 367 in the Office of the Register of Deeds of Dare County, North Carolina.

(5) That Section 3.4 "Unit Boundaries for Phase I" is hereby amended as the same applies to Phase II as follows:

The unit boundaries for Phase II are as set forth in Article III, Section 3.4 of the Declaration for HCC.

(6) The Limited Common Elements in Phase II of HCC are as set forth in Article IV, Section 4.3 of the Declaration for HCC.

(7) That in accordance with Article VI, Section 6.3 of the Declaration, the allocations to each unit of percentage of undivided interest in the Common Elements, of the percentage of Common Expenses and of the votes in the Association for all units in Phase I and Phase II of HCC are as follows:

| <u>Unit No.</u> | <u>Percentage of Undivided Interest In Common Elements</u> | <u>Percentage of Common Expenses</u> | <u>Votes</u> |
|-----------------|--|--------------------------------------|--------------|
| 101             | 1/24   | 1/24                                 | 1            |
| 101B            | 1/24   | 1/24                                 | 1            |
| 102             | 1/24   | 1/24                                 | 1            |
| 102B            | 1/24   | 1/24                                 | 1            |
| 103             | 1/24   | 1/24                                 | 1            |
| 103B            | 1/24   | 1/24                                 | 1            |
| 104             | 1/24   | 1/24                                 | 1            |
| 104B            | 1/24   | 1/24                                 | 1            |
| 201             | 1/24   | 1/24                                 | 1            |
| 201B            | 1/24   | 1/24                                 | 1            |
| 202             | 1/24   | 1/24                                 | 1            |
| 202B            | 1/24   | 1/24                                 | 1            |
| 203             | 1/24   | 1/24                                 | 1            |
| 203B            | 1/24   | 1/24                                 | 1            |
| 204             | 1/24   | 1/24                                 | 1            |
| 204B            | 1/24   | 1/24                                 | 1            |
| 301             | 1/24   | 1/24                                 | 1            |
| 301B            | 1/24   | 1/24                                 | 1            |
| 302             | 1/24   | 1/24                                 | 1            |
| 302B            | 1/24   | 1/24                                 | 1            |
| 303             | 1/24   | 1/24                                 | 1            |
| 303B            | 1/24   | 1/24                                 | 1            |
| 304             | 1/24   | 1/24                                 | 1            |
| 304B            | 1/24   | 1/24                                 | 1            |

(8) As the result of this Amendment to Declaration, twelve additional condominium units are added to HCC for a total of twenty-four units. That property described in "Exhibit A" to this Declaration constitutes that property upon which Phase II of HCC is situated upon.

(9) This Amendment to HCC does not divest any owner of any portion of his dwelling unit and does not materially alter the plan development set forth in the Declaration.

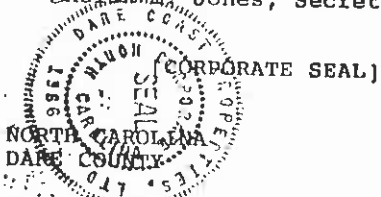
IN WITNESS WHEREOF, Declarant has caused this Amendment to Declaration to be signed and sealed the day and year below acknowledged.

DARE COAST PROPERTIES, LTD.

By: Gordon B. Jones (SEAL)  
Gordon B. Jones, President

ATTEST:

By: Helen M. Jones  
Helen M. Jones, Secretary



I, a Notary Public of the County and State aforesaid, certify that Helen M. Jones personally appeared before me this day and acknowledged that she is Secretary of Dare Coast Properties, Ltd., a North Carolina Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary.

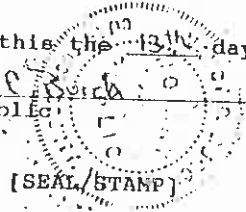


OK 72100184

WITNESS my hand and notarial seal this the 13<sup>th</sup> day of August, 1990.

2/27/95  
My Commission Expires

J. Lewis C. Gray  
Notary Public



The foregoing Certificate(s) of J. Lewis C. Gray a Notary Public in and for Dare County, N.C. is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

By: J. Lewis C. Gray Register of Deeds for Dare County  
John J. Gray Deputy/Assistant - Register of Deeds

## "EXHIBIT A"

All that certain lot or parcel of land situated in the Town of Nags Head, Nags Head Township, Dare County, North Carolina and more particularly described as follows:

BEGINNING at a concrete monument situated in and on the East margin or right-of-way of North Carolina Highway 12 leading through the Town of Nags Head (a/k/a/ Virginia Dare Trail), said concrete monument also being the Southwest corner of Lot 16, Hawks Nest Subdivision as shown on plat recorded in Plat Cabinet A, Slide 286; thence proceeding from the point or place of beginning North 56 deg. 33 min. 02 sec. East 301.86 feet to an iron pipe; thence continuing North 56 deg. 33 min. 02 sec. East 129.14 feet, more or less, to the Atlantic Ocean; thence along the Atlantic Ocean, following the various courses and meanderings thereof in a general Southeasterly direction 174.35 feet to a point, said point being located on a course North 27 deg. 27 min. 16 sec. West 147.46 feet more or less, from the point of intersection of the North line of that property known as "The Admiral Condominiums"; thence cornering and proceeding South 63 deg. 13 min. 13 sec. West 158.72 feet to an iron pipe; thence cornering North 27 deg. 02 min. 41 sec. West 25 feet to an iron pipe; thence cornering South 62 deg. 57 min. 21 sec. West 62 feet to an iron pipe; thence cornering South 27 deg. 02 min. 38 sec. East 30 feet to an iron pipe; thence cornering South 55 deg. 17 min. 18 sec. West 55 feet to an iron pipe; thence proceeding South 63 deg. 22 min. 49 sec. West 89 feet to an iron pipe; thence cornering North 24 deg. 34 min. 54 sec. West 8 feet to an iron pipe; thence cornering South 66 deg. 34 min. 15 sec. West 67 feet to an iron pipe situated in the Eastern margin of the 60 foot right-of-way of North Carolina Highway 12; thence with the Easterly margin of the said right-of-way North 26 deg. 30 min. 15 sec. West 125 feet to the point or place of beginning, containing 1.48 acres more or less designated as "Heron Cove Condominiums Phase II" on that plat or survey for Dare Coast Properties, Ltd. by Quible & Associates, P.C. dated January 6, 1989.



# State of North Carolina

Department  
of the  
Secretary of State

To all to whom these presents shall come, Greeting:

*I, Thad Eure, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached ( 3 sheets) to be a true copy of*

ARTICLES OF INCORPORATION

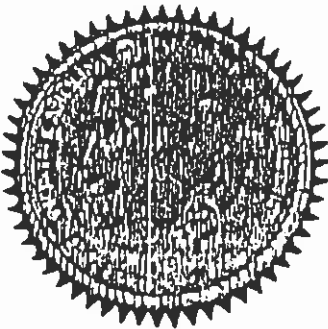
OF

HERON COVE HOMEOWNERS ASSOCIATION, INC.

*and the probates thereon, the original of which was filed in this office on the 9th day of March 1900, after having been found to conform to law.*

*In Witness Whereof, I have hereunto set my hand and affixed my official seal.*

*Done in Office, at Raleigh, this 9th day of March in the year of our Lord 1900.*



*Thad Eure*  
Secretary of State