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KITTY HAWK BAY CLUB

DECLARATION OF COVENANTS AND RESTRICTIONS
DORRIS A. FRY
REGISTER OF DEEDS
DARE COUNTY, N.C.

THAT WHEREAS, Kitty Hawk Bay Club, Inc., hereinafter the Developer, is the fee simple owner of those certain lots or parcels of land shown and delineated on that certain map or plat entitled "Kitty Hawk Bay Club", dated January 30, 1984, by Triangle Engineering Survey, Inc., recorded in plat Cabinet B, Slide 227, in the Office of the Register of Deeds of Dare County, North Carolina; and

WHEREAS, paragraph 24 of the Declaration of Co-Ownership Interests recorded in Book 50, Page 568 of the Kitty Hawk Bay Club provides that the declarant, Kitty Hawk Bay Club, Inc., has the right to amend the Declaration of Co-Ownership Interest by filing a written amendment in the Office of the Register of Deeds of Dare County prior to the sale of 60 co-ownership interests in the property; and

WHEREAS, as of the date of this declaration, there have been no co-ownership interests sold and Kitty Hawk Bay Club, Inc., is the sole owner of the property described in the aforesaid Declaration of Co-Ownership Interests and herein; and

WHEREAS, the Developer desires to revoke the Declaration of Co-ownership Interests recorded in Book 350, page 568 and terminate all easements, privileges, rights, and interest created thereby, and the Developer desires and intends to change the scheme and plan of development and ownership from that of undivided co-ownership interest as set forth in the declaration recorded in Book 350, Page 568 of the Dare County Registry such as will provide for whole ownership (as opposed to divided co-ownership interest) of the attached residential units as hereinafter provided, and further provided, that whole ownership shall not mean by definition or otherwise that the lots and dwellings thereon cannot be owned jointly by two (2) or more persons or entities; and

WHEREAS, the undersigned desires to provide for the preservation of the values and amenities in the Development (hereinafter defined) and for the maintenance of said Common Areas

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(including utilities and amenities) and, to this end, desires to subject the real property herein described to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of the said tract or parcel of land and each Owner; and

WHEREAS, by this declaration, Declarant intends to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration, remodeling and improvement of the land and the dwellings and the interests therein so conveyed or reserved, and the payment of taxes, assessments and other expenses pertaining thereto, and declares that the land and dwellings are and shall be held, conveyed, encumbered, leased, rented, occupied and improved subject to the following limitations, restrictions, covenants and conditions, all of which are declared to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment of the property and the interests so to be conveyed or reserved, and to inure to the benefit of and be binding upon such lot and dwelling unit so conveyed or reserved and all parties having or acquiring any right, title, interest or estate therein:

WHEREAS, Kitty Hawk Bay Club, Inc., has deemed it desirable for the efficient preservation of the values and amenities in the development, that there be an entity to which will be delegated and assigned the powers of maintaining and administering the common area, administering and enforcing the covenants and restrictions, and levying, collecting and disbursing the assessments and charges hereafter permitted and described; and

WHEREAS, there has been incorporated under the laws of the State of North Carolina, as a nonprofit corporation, The Kitty Hawk Bay Club Homeowners Association, Inc., for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, Kitty Hawk Bay Club, Inc., its successors and assigns, declares that the real property described herein and shown on that certain plat entitled "Kitty Hawk Bay Club" dated January 30, 1984 by Triangle Engineering Services, Inc., and recorded in Plat Cabinet B, Slide 227, Dare County Registry, is

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and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth, and the Declarant, for itself, its successors and assigns, hereby submits the following described property to this Declaration of Covenants and Restrictions subject to the terms and conditions hereafter set out.

Beginning at an iron pipe located in the southeast corner of Lot 317 of Avalon Beach Subdivision, said beginning point also being located in and on the western right of way margin of Bay Drive; thence running along and with the western right of way margin of Bay Drive South 14 deg. 34 min. 00 sec. East 150.88 feet to an iron pipe and a corner; thence turning and running South 69 deg. 15 min. 00 sec. West 183.90 feet to a point located on an existing bulkhead; thence running South 79 deg. 20 min. 39 sec. West 92.43 feet to a point and a corner; thence turning and running North 13 deg. 59 min. 53 sec. West 87.61 feet to a point and a corner; thence turning and running North 69 deg. 15 min. 00 sec. East 199.80 feet to a point and a corner; thence turning and running South 24 deg. 25 min. 04 sec. East 15.63 feet to a point and a corner; thence turning and running North 65 deg. 47 min. 57 sec. East 39.87 feet to a point and a corner; thence turning and running North 11 deg. 59 min. 09 sec. West 60.71 feet to a point located in the south boundary line of Lot 317, Avalon Beach Subdivision and a corner; thence turning and running North 69 deg. 15 min. 00 sec. East 31.0 feet to an iron pipe located in and on the western right of way margin of Bay Drive and the point of beginning.

For further description reference is made to that survey for David Menaker, Kill Devil Hills, Dare County, North Carolina prepared by Triangle Engineering and Surveying, Inc., and dated April 14, 1983.

The above described property being all of Lots 318, 319, and 320 in subdivision known as Avalon Beach, shown on map or plat thereof prepared by T.R. Pettit, Registered Engineer, dated June 30, 1950, and duly recorded in Map Book 1, Page 107 in the Office of the Register of Deeds of Dare County, North Carolina.

ARTICLE I

Revocation of Declaration of Co-Ownership Interest and Definitions

The Developer, Kitty Hawk Bay Club, Inc., withdraws the Declaration of Co-ownership Interest recorded in Book 350, page 568 of the Dare County Registry from the Kitty Hawk Bay Club

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project, and the Developer declares said Declaration of Co-ownership Interest recorded in Book 350, page 568 of the Dare County Register to be null, void, revoked, and terminated for any and all purposes therein expressed, and in the event the foregoing revocation and termination is deemed or determined to be ineffective, then said Declaration of Co-ownership Interest is hereby amended by this Declaration of Covenants and Restrictions.

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

(a) The "Association" shall mean The Kitty Hawk Bay Club Homeowners Association, Inc., its successors and assigns.

(b) The "Development" shall mean the real property described herein and shown on that certain plat entitled "Kitty Hawk Bay Club", dated January 30, 1984, by Triangle Engineering Services, Inc., and recorded in plat Cabinet B, Slide 227, Dare County Registry, and amendments thereto, together with all buildings and improvements thereon and thereto.

(c) The "Common Areas" shall mean all those areas of land except Dwelling Units and Lots and Limited Common Areas, including the facilities being constructed thereon, owned by the Association and described herein and on that certain plat entitled "Kitty Hawk Bay Club", dated January 30, 1984, and recorded in plat Cabinet B, Slide 227, Dare County Registry. Said areas are intended to be devoted to the common use and enjoyment of the members of the Association (herein defined), their families and guests, and are not dedicated for use by the general public. Common Areas shall include the pier, bulkhead (except that portion of the bulkhead designated as Limited Common Area herein), existing boat ramp dock, septic system lines running from the development to Lot 323 and under the surface of Lot 323; as well as the distribution box and drain field located under the surface of said Lot.

(d) "Limited Common Area" shall mean those portions of the Common Areas or facilities reserved for the use of a particular Dwelling Unit or Units to the exclusion of other units. Limited Common Areas or facilities are as follows:

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(1) That area formed by lines extended from the Northeast and Northwest corners of Lots 1, 2, 3, 4, and 5 in a northerly direction such that each line intersects the bulkhead at a perpendicular or 90 degree angle, and that area formed by lines extended in a southerly direction from the Southwest and Southeast corners of Lots 6, 7, and 8 such that each line intersects the bulkhead at a perpendicular or 90 degree angle; said Limited Common Area to include that portion of the bulkhead between the lines intersecting the bulkhead at perpendicular angles for each respective unit.

(2) The designated boat slip for each unit on the pier at the west end of the property.

(e) "Dwelling Unit" shall mean any dwelling unit located in the Development, together with the Lot on which it is located, but shall not include Common Areas.

(f) "Lot" shall mean any lot on which a Dwelling Unit is or may be constructed but shall not include the Common Areas.

(g) "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to the Lot, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(h) The "Developer" shall mean Kitty Hawk Bay Club, Inc., and its grantees, successors, or assigns.

(i) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article II, Section I hereof.

ARTICLE II

Membership and Voting Rights in the Association

Section 1. Membership. Every person who is an Owner of any Lot which is subject to this Declaration's assessment (or the assessment of any supplement thereto) by the Association shall be a member of the Association.

Section 2. Voting Rights. The Association shall have two classes of voting membership.

Class A. Class A Members shall be all Owners except the Developer. Each Class A Member shall be entitled to one vote in the Association for each lot in which he holds the interest required for membership by Section 1 of this Article II.

Class B. The Class B Member shall be the Developer, its successors and assigns. The Class B Member shall be entitled to two votes in the Association for each unsold and completely constructed dwelling unit and two votes in the Association for each unsold Lot, provided that upon the happening of either of the following events, whichever first occurs, the Class B Membership in the Association shall cease and be converted to Class A Membership: (a) when the total votes outstanding in the Class A Membership in the Association equals seven or (b) on December 31, 1986.

When a purchaser of a Dwelling Unit takes title thereto from the Developer, the purchaser becomes a Class A Member of the Association and membership of the Developer with respect to that Dwelling Unit shall cease.

ARTICLE III

Property Rights and Common Areas

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article III, every Member of the Association shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Dwelling Unit.

Section 2. Title to Common Areas. The Developer hereby covenants for itself, its successors and assigns, that prior to the sale of eight Dwelling Units it will convey to the Association fee simple title to the Common Areas, free and clear of all covenants, restrictions, easements, encumbrances and liens except covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, and including 1984 and subsequent ad valorem taxes and those certain Deed of Trust from ABG Partnership, to Dwight H. Wheless, Trustee for Eastern Savings & Loan Association, Inc., dated October 12, 1984 and recorded in the Dare County Registry.

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Section 3. Owners Building and Utility Easements. There is hereby conveyed and the Owner does hereby declare, publish, give, grant and convey to the lot and dwelling unit owners, their heirs, successors and assigns, subject to the conditions set forth herein, a perpetual right and easement to construct, or erect, build, repair and maintain dwelling units or portions thereof across and outside of the lot lines as shown on the Kitty Hawk Bay Club recorded plat and upon the common areas of the association, as well as an easement for Cable TV and for any utilities necessary for the use and enjoyment of said dwelling units built or to be built on the aforesaid lots, as well as access over the common property for such purposes. The rights and easements shall be appurtenant to the lot for which it is necessary and shall extend a distance of three (3) feet in all directions from the original building foundation which supports the exterior load bearing walls (excluding foundations of porches, decks, stoops, stairways, walkways, and overhanging or cantilevered decks or porches), but in no event shall said easements cross over the lot line of any other lot on said plat and some portion of the foundation of the dwelling unit shall lie within the boundary and upon some portion of the lot as shown and delineated on said recorded plat of Kitty Hawk Bay Club (it being the intention of the Developer that a portion of the building as constructed shall be within the boundaries and upon one of the lots as shown on the aforementioned plat). The easement and rights shall be appurtenant to and run with each of the aforesaid lots.

A 15 x 15 foot square easement in the Southeast corner of the development is hereby reserved for the owners of Dwelling Units for the placement, construction, repair, and maintenance thereon of a satellite disc receiving system, (to be installed by unit owners at their expense) and there is hereby granted to said Dwelling Unit owners an easement for the lines or cables from said receiving station to each Dwelling Unit.

A parking easement 10 feet in width along the east side of Lot 1 is reserved for the exclusive use of the owner of Dwelling Unit 1, his heirs and assigns, said parking easement shall be

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appurtenant to and run with Lot 1 and Dwelling Unit 1 of Kitty Hawk Bay Club.

Section 4. Boat Slips.

(a) Each Dwelling Unit may have a boat slip with a number designated and corresponding to the number of the Dwelling Unit along the existing pier at the west end of the development or along the bulkhead of the west end of the development. The use of the pier shall be subject to the Rules and Regulations adopted by the Kitty Hawk Bay Club Homeowners Association.

Section 5. Extent of Members' Easements. The rights and easements granted Members hereby shall be subject to the following:

(a) The rights of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Areas and in aid thereof, to mortgage or otherwise secure such borrowings by creating a lien or other security interest in said Common Areas and right of any mortgagee of said property or others holding a security interest created for the purpose aforesaid shall be superior to the rights of the Owners hereunder;

(b) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Areas against foreclosure;

(c) The right of the Association to suspend the enjoyment rights of any Member to the Common Areas for any period during which any assessment remains unpaid or for any infraction of any rules and regulations;

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Areas or any portions thereof;

(e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication, transfer or determination as to the purposes

or as to the conditions thereof shall be effective unless an instrument, signed by members entitled to cast two-thirds of the votes of the Class B Member, if any, has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the action is sent to every Member not less than 10 nor more than 50 days in advance of any action taken; and

(f) The right of the Developer, unilaterally and/or in conjunction with the Association, to grant and reserve easements and rights of way through, under, over, and across the Common Areas, for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, fuel, oil, cablevision and other utilities and services, and the right of Developer to grant and reserve easements and rights of way through, over, upon and across the Common Areas for the completion of Developer's work in connection with the construction of improvements in the Common Areas and for the completion of Developer's work and for the operation and maintenance of the Common Areas.

(g) The right of the Developer to unilaterally grant and reserve the right and easement of enjoyment in and to the Common Areas to every Owner of a Dwelling Unit located in the Development, which right and easement shall be appurtenant to and shall pass with the title to every Dwelling Unit.

Section 6. Septic and Drain Field Easement. David S. Menaker does hereby grant and convey to each owner of a Lot and Dwelling Unit shown on the plat of Kitty Hawk Bay Club recorded in plat Cabinet B, Slide 227, and to the Kitty Hawk Bay Club Homeowners Association, Inc., a septic and drain field easement over on and upon the surface of Lot 323, Avalon Beach, as shown on the plat recorded in Map Book 1, Page 107, Dare County Registry, for the purpose of constructing, maintaining and repairing a septic system and drain field as well as the disposal of waste water and septic system affluent from the development known as Kitty Hawk Bay Club; said easement shall be appurtenant to and run with each Lot and the common property shown on the aforesaid plat of Kitty Hawk Bay Club; and said easement shall continue until the first of the following shall occur: (1)

another site has been conveyed to the Dwelling Unit owners and the Association having the improvements and permits necessary for the disposal of septic affluent and waste water from the Dwelling Units of Kitty Hawk Bay Club development, including lines and laterals to connect all Dwelling Units to the said septic disposal system, all without cost or expense to the Dwelling Unit owners or the Association; or (2) until central sewer to the development and the payment by the owner of lot 323, Avalon Beach, of all costs, charges and fees necessary for Dwelling Units and accessory facilities to connect to said central system. However, nothing herein shall obligate, create a duty on behalf of, or require the Declarant (Developer), its successor, assigns, or grantee, or the owner of lot 323, Avalon Beach to connect to available central sewer or to relocate the septic system on property other than lot 323, Avalon Beach.

The Association shall maintain, repair and replace, if necessary, the septic system and equipment and materials located within the easement area and the cost shall be collected as part of and in the same manner as the assessments provided for herein.

ARTICLE IV

Completion, Maintenance and Operation of Common Areas and Covenant for Assessments Therefor

Section 1. Completion of Common Areas by the Developer.

(a). Prior to the conveyance of the last Dwelling Unit in the Development, the Developer shall construct the amenities and all other improvements (including utilities referred to herein) shown on the aforesaid plat, which improvements shall be located on the Common Areas.

(b). Developer's obligation to complete the construction of said improvements, at the Developer's sole cost and expense, shall survive the conveyance of the Common Areas to the Association.

Section 2. Operation and Maintenance of Common Areas. Commencing on the date of the conveyance of the first dwelling unit, the Association shall operate and maintain the Common Areas at its sole expense.

Section 3. Assessments.

(a). Commencing on the date of conveyance of the first Dwelling Unit in the Development and thereafter, the Developer, for each completed Dwelling Unit in the Development owned by the Developer, hereby covenants, and each subsequent Owner of any such Dwelling Unit by acceptance of a deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments (maintenance charges), and (2) special assessments for capital improvement, such assessments to be fixed, established and collected from time to time as hereinafter provided.

(b) The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Development in connection with their use and enjoyment of the Common Areas, including, but not limited, to, the payment of taxes, fees, utility or other charges, insurance premiums and debt service on mortgages encumbering the Common Area, if any, any repair, replacement and addition to the Common Areas, the cost of labor, equipment, materials, management and supervision of the Common Areas, or for creating reserves for such purposes, all of which shall be the obligation the Association. The Developer shall have no obligation to operate and maintain the Common Areas after the conveyance of the first completed Dwelling Unit.

Section 4. Amount and Payment of Annual Assessment. The Association shall from time to time fix the amount of the annual assessment at a sum sufficient to pay the anticipated costs of maintaining and operating the Common Areas as contemplated by Section 3 (b) of this Article IV and any operating deficits previously sustained. The proportionate share of the aggregate assessments of the Association chargeable to each Lot shall be the said aggregate annual assessment divided by the number of Lots owned by Class A and Class B Members. An Owner's annual obligation shall be payable as directed by the Association. The annual assessment due the Association from each Owner of a Lot for the year 1984 shall be One Hundred Dollars (\$100.00).

Thereafter the annual assessment shall be established by the Board of Directors of the Association.

Section 5. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized by Section 4 of this Article IV, the Association may levy special assessments which shall be fixed in accordance with the proportions set forth in section 4 of this Article IV) for all Dwelling Units for the purposes of defraying, in whole or in part, the cost of any construction, reconstruction or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, as well as facilities, including the necessary fixtures and personal property related thereto, provided that any such special assessments shall have the assent of two-thirds of the vote of each class 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 not less than 10 days nor more than 50 days in advance of the meeting, setting forth the purpose of the meeting. The due date of any specified assessments shall be fixed in the resolution authorizing such assessments.

Section 6. Duties of the Board of Directors. In the event of any change in the annual assessments as set forth above, the Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for such assessment period at least 30 days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto, which shall be maintained by the Association and shall be open to inspection by any Owner.

Written notice of the assessments shall thereupon be sent to every Owner subject thereto.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessment, a certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated

to have been made.

Section 7. Nonpayment of Assessment; the Personal Obligation of the Owner; the Lien and Remedies of the Association. Every assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided, from the time made and until it is paid, shall constitute and continue as a lien on each Dwelling Unit and shall also be a personal obligation of the Owner of the Dwelling Unit on the date when such assessment is due and payable, but the personal obligation for assessments made but unpaid shall not thereafter pass to the successors in title of the Owner unless responsibility therefor shall be assumed by them in writing. If any such assessment is not paid within 30 days after the date upon which it is due and payable, such assessment shall bear interest from the date on which it is due and payable at the rate of 18% per annum.

The Association may bring a legal action against any Owner personally obligated to pay any assessment and/or may enforce or foreclose the lien against the Dwelling Unit in respect of which any assessment, or interest thereon, has not been paid. In that event a judgment shall include interest on the assessment as above-provided and a sum, to be fixed by the Court, to reimburse the Association for all costs, disbursements and expenses (including without limitation, reasonable attorney's fees) incurred by the Association in connection with said action.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage, deed of trust or other security interest now or hereafter placed upon any Lot. Any and all assessments which may become due and payable prior to a sale or transfer of the Lot pursuant to a decree of a foreclosure, or by conveyance in lieu of foreclosure shall be paid by the purchaser, except where the purchaser is the holder of the obligation secured by any such mortgage, deed of trust or security interest.

Section 9. Obligation of Owner of Dwelling Unit to Maintain Insurance Coverage. Each owner of a Dwelling Unit shall obtain and maintain in force such insurance coverage on his

Dwelling Unit as the Board of Directors of the Association may determine or require in sufficient amounts to replace his Dwelling Unit. Each owner of a Dwelling Unit shall furnish to the Board of Directors of the Association such evidence of insurance coverage as the said Board of Directors may from time to time require. In the event an owner fails to maintain such coverage or furnish evidence thereof, the Association may obtain policies providing such coverage and pay the premiums therefor, which premiums shall be chargeable against the owner of a Dwelling Unit failing to maintain such coverage or failing to furnish evidence thereof as aforesaid, which premiums shall constitute and continue as a lien on the Dwelling Unit of any such owner and shall also be a personal obligation of any such owner and be enforced as provided in Article IV, Section 7 hereof.

ARTICLE V

Use of Property

Section 1. Fence. No jetty or fence of any type shall be erected or placed upon said lot except with the prior written approval of the Board of Directors of the Association. The Directors of the Association shall maintain and repair or cause to be repaired the privacy fence located along the exterior boundary of the development.

Section 2. Obstructions. There shall be no obstruction of the Common Areas or Limited Common Areas nor shall anything be stored in the Common Areas without prior consent of the Board of Directors of the Association. Decks or walkways in Limited Common Areas behind units shall not be deemed obstructions.

Section 3. Planting. No owner, other than the Developer, shall plant or install any trees, bushes, shrubs, or other plantings, or authorize the same to be done, in any Common or Limited Common Areas, without the written approval of the Board of Directors of the Association.

Section 4. Easements.

(a) Perpetual easements in the Development for the installation and maintenance of sewer, water, gas,

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electrical, telephone, cablevision, drainage facilities, and other utilities or services, for the benefit of the adjoining land owners, the County of Dare or any other municipality having jurisdiction over the development, any municipal, public or private utility company ultimately operating such facilities are reserved to the Developer, its successors and assigns, for the purpose of dedication to such persons or entities.

(b) Easements in general in and over each Dwelling Unit and/or Lot for the installation and maintenance of electric, gas and telephone facilities are reserved to the Developer, its successors and assigns. No building or structure shall be erected within the easement areas occupied by such facilities.

Section 5. Residential Use. All Dwelling Units or Lots shall be used for residential purposes only, but this shall not prohibit the owner from renting the unit for residential purposes. No building shall be erected or placed or permitted to remain on any lot other than one single-family dwelling.

Section 6. Signs. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale or rent or signs used by the Developer its successors and assigns, to advertise the property during the construction and sale period.

Section 7. Animals. No animals, livestock or poultry of any kind, other than household pets, shall be kept on any Dwelling Unit or Lot. No household pets shall be housed outside a Dwelling Unit or permitted to run free. A dog's owner shall scoop up, collect and dispose his pet's waste off site of the development or in a proper container for such disposal.

Section 8. Trailers. No trailer or temporary structures, such as tents, shacks, garages, barns or other outbuildings, campers, modulars or prefabricated structures, shall be moved onto, maintained, placed, used or permitted to remain on a Dwelling Unit, Lot or Common Areas.

Section 9. Common Areas. The Common Areas may be used by an owner and his guests only as provided by this Declaration,

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the Bylaws of the Association and/or rules duly promulgated by the Association. No commercial use may be made of any recreational facilities located on the Common Areas and no loud speakers shall be permitted or used. Any outdoor lighting used in connection with recreational facilities shall be extinguished between 10 o'clock p.m. and 7 o'clock a.m. each day.

Section 10. Architectural Review. The design, materials, construction and location on each lot of any home, residence, each lot of any home or residence or other permitted building or buildings or the alteration or addition thereto, before the beginning of any work thereon, shall be submitted to the Developer for approval and its approval shall be a condition precedent to the beginning of work on said structure.

Section 11. Alterations and Repairs. Alterations of every nature to a Dwelling Unit or Lot, including, but not limited to, screening porches, installing screen doors, screens, stairs or windows or exterior painting, shall be approved by the Board of Directors of the Association.

Damage to or destruction of any one or all of the Dwelling Units and/or improvements shall be promptly repaired and restored by the Owner using the proceeds of insurance for that purpose as provided in Article IV, Section 9 of this Declaration. All repairs or reconstruction shall be made substantially in accordance with the plans and specifications used for the original structures.

Section 12. Porch Railing. No articles, including, but not limited to, towels, blankets or flags, shall be permitted on porch railings or otherwise attached to a Dwelling Unit.

Section 13. Waste and Rubbish. No lot shall be used or maintained as a dumping ground for rubbish. All trash, garbage or other waste shall be kept in sanitary containers and all incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

Section 14. Offensive Activity. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance

to the neighborhood.

Section 15. Additional Development. The Developer, its successors or assigns, reserves the right to develop adjoining land and impose upon the land so developed these covenants and restrictions provided such tract or parcel of land is limited to residential use. The owners of all subsequent lots and dwelling units made subject to this declaration of covenants and restrictions shall be a member of the Kitty Hawk Bay Club Homeowners Association, Inc., with all duties, benefits and rights, including voting rights.

ARTICLE VI

General Provisions

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or any owner, their respective heirs, successors and assigns, until December 31, 1999, unless otherwise expressly limited herein, after which time the said covenants and restrictions shall be automatically extended for successive periods of ten years each unless an instrument signed by the Owners of seventy-five percent of the Lots has been recorded, agreeing to change or terminate the said covenants and restrictions. Provided, however, that no such agreement to change shall be effective unless made and recorded at least six (6) months in advance of the effective date of such change and unless written notice of the proposed agreement is sent to every owner at least ninety (90) days in advance of any action taken.

This Declaration may be amended at any time by an instrument signed by Members holding not less than two-thirds of the votes of all classes of the membership. Any such amendment must be recorded in the office of the Register of Deeds of Dare County to be effective.

Section 2. Notices. Any notice required or permitted to be sent to any Member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed first class mail, postage prepaid, 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.

Section 3. Enforcement. The Association, any Member, or any Owner shall have the right to enforce these covenants and restrictions against any person or persons violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or recover damages; and against the land to enforce any lien created by these covenants; and failure by the Association or Member or any owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement shall be chargeable to the owner violating these covenants and restrictions and the expense so incurred by the Association shall constitute a lien on such Owner's Dwelling Unit and Lot, collectible in the same manner as assessments hereunder.

Section 4. Dissolution of Association. In the event the Association is dissolved in accordance with the provisions of the Association's Articles of Incorporation and the assets, both real and personal, of the Association are dedicated to a governmental authority having ad valorem taxing powers, the covenants and restrictions contained herein, other than those applying to assessments, shall remain in full force and effect. It shall be an obligation of the Association, prior to said dissolution, to establish an appropriate authority, corporation or other entity for enforcing the liens and restrictions contained herein.

In the event that such dedication to a governmental authority is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to purposes nearly as practicable the same as those to which they were required to be devoted by the Association. In such event the covenants and restrictions contained in the Declaration, including those applying to assessments, shall remain in full force and effect. No such disposition of the properties of the Association shall be effective to divest or diminish any right or title of any Member vested in him under the Declaration and deed applicable to his

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property unless made in accordance with the provisions of the Declaration and deed.

Section 5. Conflicts. In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall control.

1. No Exemption. No Owner may exempt himself from liability for any obligation set forth herein by any waiver of the use or enjoyment of the Dwelling or Dwelling Unit or by any other action.

2. No Waiver. The failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce such provision thereafter.

3. Interpretation. The section titles at the beginning of each number section of this Declaration are for convenience only and the words contained therein shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Declaration. As used herein, the singular shall include the plural and the masculine or neuter gender shall include the other genders.

4. Amendment. The Declarant reserves the right and shall have the right to amend this Declaration of Restrictions and Covenants by filing a written amendment in the Office of the Register of Deeds of Dare County prior to the sale of eight (8) Dwelling Units. This Declaration may be amended by written instrument executed by Owners owning six (6) of the Dwelling Units or Three-Fourths of the Dwelling Units actually constructed, provided, however, that no such amendment may effect or alter the right of any owner to use or occupy the Common Area in accordance to the terms of this Declaration and the rights and easements appurtenant to said land, unless such owner shall expressly so consent. The amendment shall not be effective until a written instrument referred to above is recorded in the Dare County Registry.

Section 6. Severability. Invalidity of any one of these covenants or restrictions by judgement or court order shall

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in no way affect the validity of any other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned North Carolina Corporation has caused this Declaration to be executed by its Corporate Officers this 11th day of October, 1984.

KITTY HAWK BAY CLUB, INC.

By: David S. Menaker (SEAL)
David S. Menaker

ATTEST:

Betty Lou Williams
Betty Lou Williams, Assistant Secretary

David S. Menaker
David S. Menaker

NORTH CAROLINA

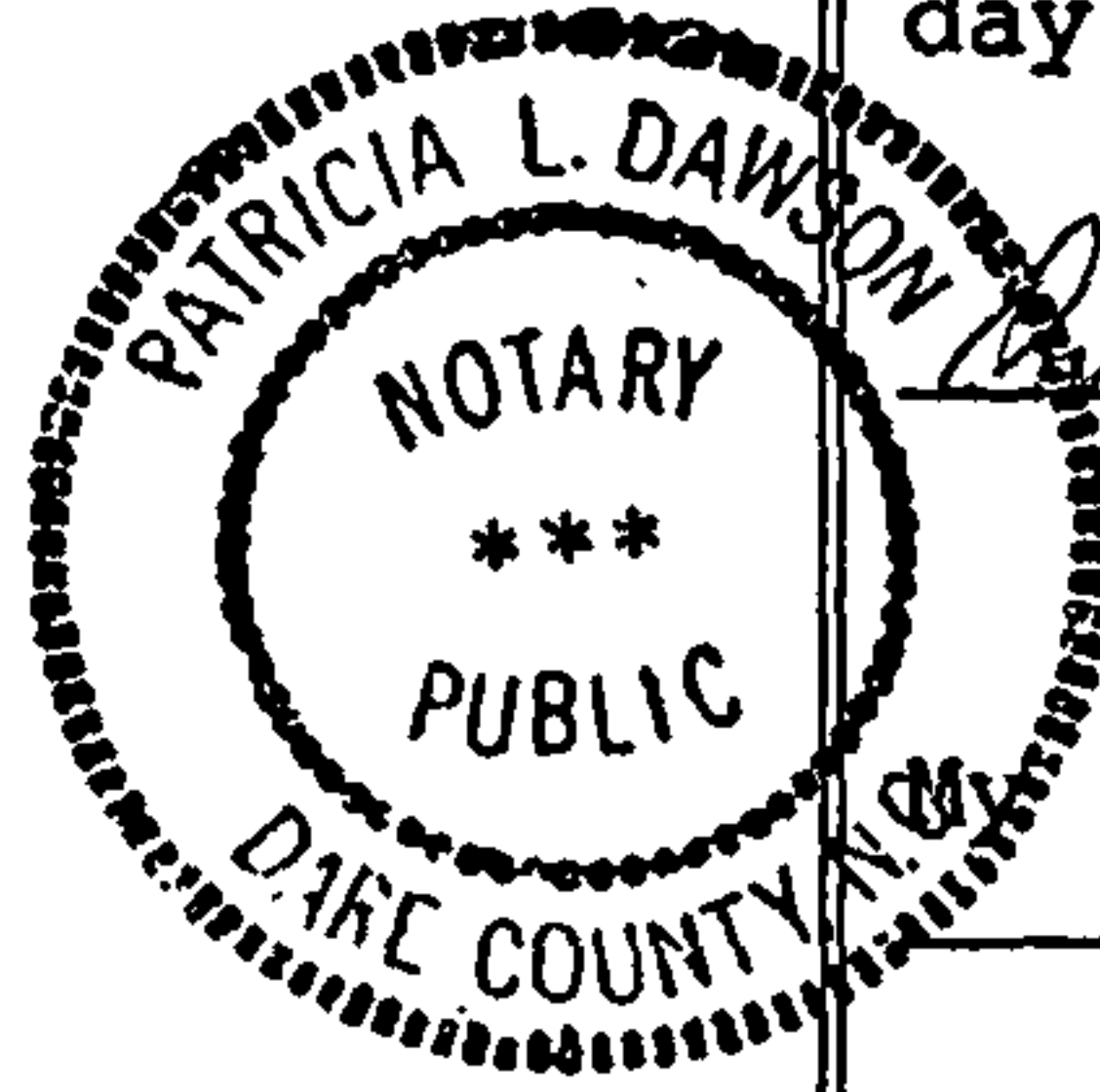
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that David S. Menaker personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 11th day of October, 1984.

Patricia L. Dawson
Notary Public

My commission expires: 12/12/89



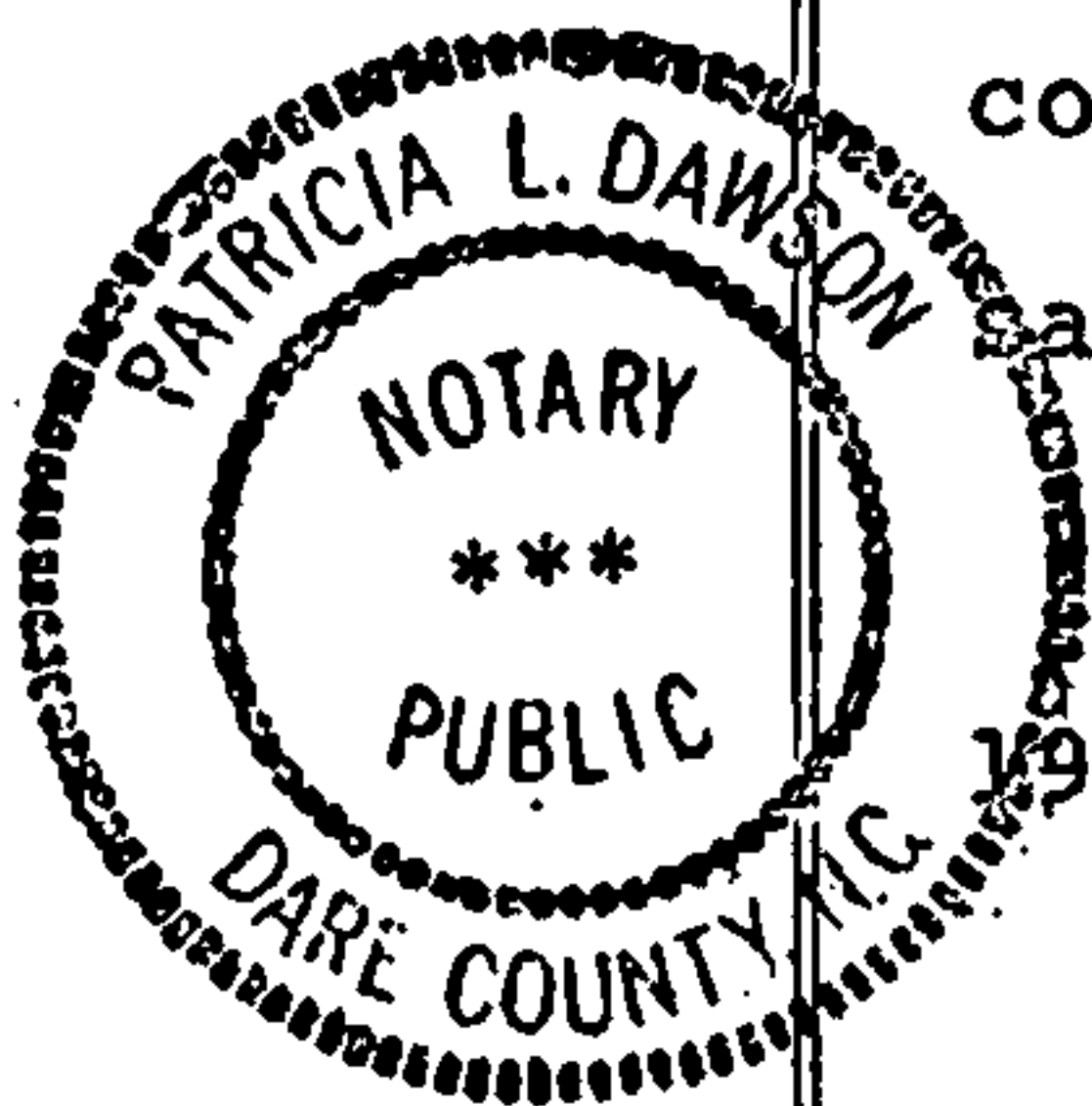
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STATE OF NORTH CAROLINA

COUNTY OF DARE

This is to certify that on the 11TH day of October, 1984, before me personally came Betty Lou Williams with whom I am personally acquainted, who being by me duly sworn, says that Davis S. Menaker is the President and that she, the said Betty Lou Williams is the Assistant Secretary of Kitty Hawk Bay Club, Inc., the corporation described in and which executed the foregoing instrument; that she knows the common seal of said corporation, that the seal affixed to the foregoing instrument is said common seal and the name of the corporation was subscribed thereto by the said President and that said President and Secretary subscribed their names thereto and said common seal was affixed all by authority of the Board of Directors of said corporation and that the said instrument is the act and deed of said corporation.

Witness my hand and notarial seal this 11th day of October, 1984.



Patricia L. Dawson
Notary Public

My commission expires June 12, 1989.

STATE OF NORTH CAROLINA

COUNTY OF DARE

The foregoing certificates of Patricia L. Dawson ^{are} ~~is~~ 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.

Doris A. Gray
Register of Deeds
By *Barbara M. Gray*
Assistant ~~Deputy~~
Register of Deeds

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RECORDED: OCT. 16 1984