

DECLARATION OF PROTECTIVE COVENANTS AND CONDITIONS

SeaPines Subdivision, Duck
Atlantic Township, Dare County, North Carolina

APPLICABILITY

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

SeaPines

Plat Cabinet

Slides

ARTICLE I: PURPOSES

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

ARTICLE II: RESIDENTIAL AREA COVENANTS

Section 1. Residential Use. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one single family residence and any accessory buildings approved in accordance with the terms of Section 4 of this Article. No business or business activity may be carried on upon the property at any time, provided however, that nothing herein shall preclude KHL, its subsidiaries, affiliates, and employees from using all or part of the dwellings owned by them for the purpose of carrying on business directly related to the development and/or management of this subdivision.

Section 2. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the property, nor shall anything be done which may be or may become a nuisance or annoyance to residents within the Property.

Section 3. Subdivision of Lots. No lot shall be subdivided, or its boundary lines changed, except with the prior written consent of KHL; however, it shall be permissible to combine two or more adjacent lots which have a common ownership into one tract of land for purposes of building a dwelling which would be authorized on such lots individually. In the event of such a combination, the setback requirements relating to the common boundary between the lots will not prohibit building upon that boundary so long as setback requirements relating to the outside borders of the tract are met. This provision does not reduce or remove any other restriction which may exist as a result of this declaration.

Section 4. Approval of Plans. No building or other structure, site work or clearing preparatory to construction shall be begun, altered, added to, maintained or reconstructed on any lot until the plans and specifications for such work have been reviewed and approved by KHL. Before commencing such review, a lot owner shall submit to KHL three (3)

complete sets of plans and specifications including but not limited to: a site plan, a foundation plan, a floor plan or plans, the four directional elevations clearly showing notations as to height complying with the language that follows in this section, and a schedule of proposed exterior colors and materials. No change shall be made from such approved plans and specifications, nor shall subsequent alterations be caused to the site or building without the express approval of KHL. KHL may approve the plans, siting or specifications conditionally, or it may refuse approval upon any grounds, including purely aesthetic considerations, which in its sole discretion shall appear warranted to protect the beauty and harmony of the Property.

If for whatever reason any application for approval shall include any structure proposed to be situated on a piling-type foundation, KHL specifically reserves the right as part of the approval process to set a limit for the amount of exposure above ground allowed for any such pilings, and to require screening and masking of all exposed pilings with solid panels, open lattice or plant materials, or a combination thereof. In no event will more than 8 feet of open piling exposure be allowed.

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

Additionally, excluding the Exception detailed below, in no event shall KHL approve any plans in which the house at the top plate of the uppermost habitable floor exceeds a height of 27 feet.

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

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

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

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

Exception: On the following selected lots 12, 13, 14, 15, 16, 17, 38, 41, 42, 43, 46 and 47, the height allowance to the top plate of the uppermost habitable floor may be extended to as much as 31 feet, so long as no more than 8 feet of piling exposure is created (as per the limitations to be found in Article II, Section 4 of this Declaration), and the top plate of any non-habitable area above the uppermost habitable floor, such as a cupola, tower, dome, or other enclosed space or architectural feature may exceed the above height limit by a maximum of 8 feet so long as no part of the house exceeds 48 feet in height.

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

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

Section 5. Building Location. KHL reserves unto itself the right to determine the exact location of any building or other structure to be located on the lot. Such location shall be determined only after a reasonable time has been allowed for the lot owner to submit plans showing such location to KHL and for KHL to review said plans. It will be the intent of KHL in this site location process to attempt to encourage in all cases a blend of structure and terrain that will least impact the neighbors, insofar as bulk, mass, height, and vista interruption. Vertically oriented structures will be allowed to the extent that location within the overall topography will lessen their impact on the locale, and horizontally oriented structures will be required by KHL when in its sole discretion such would enhance the aesthetic quality of the neighborhood, or in the event that neighboring vistas would otherwise be adversely affected.

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

Section 6. Completion of Building. Each building and structure erected upon said lot shall be completed within 18 months after commencing construction, except where completion is, in the opinion of KHL, impossible or would result in severe hardship to the lot owner or the builder due to causes not in his or their control.

Section 7. Utilities. All utilities shall be placed underground, and the erection of any exposed antennas shall be done only with the approval of KHL. Application for approval for any such antennas will be in writing to KHL with sufficient drawings, measurements and information accompanying so as to allow KHL to fully understand the visual impact of said antenna.

Section 8. Screening. Each lot owner shall provide screening from public view, approved in writing by KHL, for fuel tanks, service yards, air conditioning units, clothes lines, water tanks, rubbish storage receptacles, or for any other permanent facility which KHL, in its sole opinion, needs screening order to preserve the beauty and harmony of the development.

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

Containers for garbage to be picked up by the regular municipal collection service are to be kept at the house and moved out to street-side no sooner than 12 hours prior to collection time and moved back no later than 12 hours after collection unless there is provided by the owner an approved container camouflage facility either underground, or as a feature of the entry area architecture that entirely hides such refuse and containers from the public eye. Such a system for hiding these items from the public eye will require written approval by KHL as part of the original plan review as per Article II, Section 4 above, or as result of submission by owner for such approval subsequently.

Section 9. Temporary Structures. No temporary structure, such as a trailer, tent or shack, shall be placed upon any lot before, during, or after completion of construction of such buildings and structures as have been approved by KHL, except for such shelters as are normally used by construction contractors during the period of construction, and such shelters may not be used as residences while on the property.

Section 10. Vegetation. No existing vegetation or sand dunes shall be disturbed during construction without the express written consent of KHL. KHL shall require written proposals for the restabilization of any such disturbed area. Any vegetation disturbed during construction shall be repaired to the satisfaction of KHL prior to owner applying for an occupancy permit from Dare County. This shall not prevent KHL from engaging in such clearing, mowing, and pruning activities as are necessary to affect the overall plan of development.

Section 11. Sewage Disposal. Prior to commencing construction of any residence, applicable permits for sewage disposal shall be obtained, with the location of such proposed facility to be approved by KHL as part of the site plan approval process found in Article II, Section 4, above. Governmental approval of such systems shall be obtained after completion, with a copy of approval being forwarded to KHL prior to occupancy of the residence.

Section 12. Attachment to Utilities. No permanent public or private utilities may be connected to any residence until KHL has verified general compliance with these covenants, and with the plans and specifications submitted and approved pursuant to Section 4 of this Article. Such verification is to be in writing.

Section 13. Water Distribution System. If a community water distribution system is in operation, or shall come into operation, in any area to which this declaration is applicable, water service to each lot to which the system is available shall be obtained only from the said water distribution system.

If no such system is in operation at the time when approval of plans is obtained pursuant to the terms of Section 4 of this Article, then private wells conforming to all applicable governmental regulations may be constructed on the lots to supply water until tap-on to the water distribution system is possible. In addition, private wells may, with the approval of KHL, be located on the lots to supplement the water distribution system for such purposes as lawn and garden care.

KHL reserves the right to require its approval of the location of all such wells as part of the site plan approval requirement of Section 4 of this Article. KHL's approval shall be contingent on its corequisite approval of the location of the septic tank, grease trap, junction box and nitrification lines on the lot, and, in the interest of community health, KHL reserves the right to require standards more stringent than those required by governmental agencies, based solely on its evaluation of the property as it may relate to other properties. In no way does this reservation of right create any responsibility on behalf of KHL to make such evaluations or approvals.

Section 14. Occupancy. No residence erected upon any lot shall be occupied in any manner prior to completion of construction and the connection of permanent utilities.

Section 15. Signs. KHL reserves the right to determine the location, size, material and color of any "for sale" or "for rent" signs and to issue general guidelines to aid in the implementation of this provision. Any other signs are prohibited unless approved in writing by KHL. KHL shall not be prevented from erecting such signs as may be deemed necessary to the operation of the subdivision in the normal conduct of its business, provided that any signs so erected shall be within the acceptable limits as defined by the guidelines applicable to all other lot owners in the subdivision.

Section 16. Mail and Delivery Boxes. KHL shall determine the standards and issue guidelines thereof for the location, material, color and design for all mail and newspaper boxes and manner in which they shall be identified. All lot owners must display the County assigned street address on their mail boxes or other appurtenance as per the specifications of the Dare County Street Address Ordinance.

Section 17. Pets. No animals of any kind shall be kept, raised or bred on any lot, except a reasonable number of the usual domestic pets

such as dogs or cats, provided that such domestic pets are not kept, raised or bred for commercial purposes and provided that they are under the control of their owner at all times.

Section 18. Vehicle Storage. On each lot shall be provided an improved, non-porous surface for the parking of at least 2 vehicles off the road. The storage of travel trailers, campers, trucks and self-propelled mobile homes shall be in such a manner so as not to constitute a visual nuisance. Campers, travel trailers, trucks, self-propelled mobile homes, and other vehicles of that nature shall not be lived in while parked on a lot.

Section 19. Nuisances. It shall be the responsibility of each lot owner to maintain the exterior of his residence and the surrounding grounds of his lot in a clean, tidy and safe manner. No lot shall be used in whole or in part for the storage of anything which might cause such lot to appear cluttered, unclean or obnoxious to the eye; nor shall any substance, thing or material be kept on any lot that might emit foul or obnoxious odors or noises, or create conditions that will or may disturb the serenity, safety, or comfort of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to create a nuisance to the neighborhood.

Section 20. Entry. Each lot owner shall keep his lot cleared of unsightly underbrush, weeds or debris. If said lot owner shall permit such to exist on his property and fail to remove the same within 30 days after being requested to do so by KHL, KHL reserves for itself and its agents the right to enter upon the lot for the purpose of cleaning, clearing or cutting the grass or underbrush, or removing debris which in KHL's opinion, detracts from the overall beauty or natural character of the neighborhood or adversely affects the safety or health of the residents; and such entrance shall not be deemed a trespass. The expenses of entry and removal shall be the personal debt of the lot owner and shall also constitute a lien upon the land until paid. The provisions of this Section shall not be construed as an obligation on the part of KHL to provide such services.

Section 21. Easements for Utilities and Drainage. KHL on behalf of itself and/or such utility companies that may service the subdivision from time to time, reserves a perpetual right, privilege and easement 15 feet wide on the front, 10 feet on the rear, and 5 feet wide on the side lot lines to construct, maintain and operate in, upon, across and through said easements in a proper and workmanlike manner, electric, telephone, gas, sewer, water, drainage and other conveniences together with the right at all times to enter upon the said easement with men and equipment for the purpose of inspecting, altering and repairing the same. KHL reserves the right to maintain or otherwise keep clear any obstructions that may adversely affect the proper maintenance and operation of the various utility systems and further reserves a perpetual right to enter upon any lot for the purpose of construction or maintaining emergency drainageways for the benefit, health, and safety of the neighboring residents. These restrictions, however, shall not be considered an obligation of KHL to provide or maintain any such utilities, services or easements.

Section 22. Coverage. In compliance with the Dare County Zoning Ordinance limitation for residential zones, no more than 30 percent of any lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, stone, slate or similar materials. This covenants also insures continued compliance with stormwater runoff rules adopted by the State of North Carolina and therefore benefits may be enforced by the State of North Carolina.

ARTICLE III: COMMON ELEMENTS

Section 1. Alterations. KHL, in fulfilling its general plan for improvement of the subdivision, hereby reserves with respect to those areas denoted as private roads, the right to change and alter such roads and to install or alter utility and drainage facilities and such other facilities

as are necessary or desirable for implementation of its plan of development and of this reservation of common elements. The right to change or alter the use of such property is reserved exclusively for the benefit of KHL.

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

ARTICLE IV: PROPERTY OWNERS' ASSOCIATION

Every person who is record owner of a lot or parcel within this subdivision and any other property which may be annexed as set forth in Article VI of these Covenants shall be a member of the SeaPines Property Owners Association, Inc., (hereinafter "Association"). Ownership of such property shall be the sole qualification for such membership, and no owner shall have more than one vote per lot. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership. As used herein, "Owner" shall include one or more persons or entities who are record fee simple owners of a lot, but not mortgagees. The one vote assigned to each lot may be cast by the majority of those persons or entities who are owners of said lot.

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

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

ARTICLE V: COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the subdivision after January 1, 1992, hereby covenants; and every other owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (a) Annual Assessments or charges;
- (b) Special Assessments for capital improvements and such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

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

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

Section 3. Amount of Assessment.

(a) Initial assessment. In the year 1990, the initial annual assessment shall be Four Hundred Dollars (\$400.00) per lot payable quarterly, and will remain at that level annually unless increased as per (b) or (c) below.

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

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

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

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

Section 6. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast 50

percent of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Section 3 and 4 and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall be paid in quarterly, semiannual, or annual installments and the payment of such shall commence as to each lot on the first day of the month following the conveyance of the lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

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

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

ARTICLE VI: ANNEXATION OF ADDITIONAL PROPERTIES

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

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

ARTICLE VII: GENERAL PROVISIONS

Section 1. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 30 years from the date these covenants are recorded, after which time

said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then-owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

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

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

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

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

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

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

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

KITTY HAWK LAND COMPANY

Charles J. Hayes, Jr.
President

ATTEST:

Leslie M. Whitley
Assistant Secretary

OCEAN BEACH, INC.

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

ATTEST:

Edward T. Caton
Secretary

SOUTH OCEAN BEACH INC.

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

ATTEST:

Edward T. Caton
Secretary

NORTH CAROLINA
DARE COUNTY

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

WITNESS my hand and official stamp or seal this ____ day of _____
1990.

My commission expires: _____

NORTH CAROLINA
DARE COUNTY

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

WITNESS my hand and official stamp or seal this ____ day of _____
1990.

My commission expires: _____

NORTH CAROLINA
DARE COUNTY

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

WITNESS my hand and official stamp or seal this ____ day of _____
1990.

My commission expires: _____