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BEACH HOUSE CONDOMINIUMS

DECLARATION

THIS DECLARATION, made this 18th day of September, 1991, by Beach House Owners Association of Nags Head, Inc., a North Carolina Nonprofit Corporation ("Developer"), pursuant to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.

W I T N E S S E T H:

WHEREAS, Developer is the owner in fee simple of certain real estate situated in the Town of Nags Head, County of Dare, and State of North Carolina, legally described on Exhibit A, 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; and

WHEREAS, Developer desires to submit all of said property to the Act.

NOW, THEREFORE, Developer, as owner of said property, hereby declares as follows:

ARTICLE I.

Definitions

Definitions. As used herein, the following words and terms shall have the following meanings:

I.1. Act. The North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.

I.2. Association. Beach House Owners Association of Nags Head, Inc., a nonprofit corporation organized under Chapter 55A, North Carolina General Statutes.

I.3. Board. The Board of Directors of the Association.

I.4. Bylaws. The Bylaws of the Association which are hereby incorporated herein and made a part hereof by this reference.

I.5. Common Elements. All portions of the Condominiums except the Units. Limited Common Elements are Common Elements.

I.6. Common Expenses. Expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

I.7. Condominium. The condominium created by this Declaration.

I.8. Declarant. Developer and (i) any other persons who has executed this Declaration, or who hereafter executes an amendment to this Declaration, except Security Holders and except persons whose interests in the Property will not be conveyed to Unit Owners.

I.9. First Mortgage and First Mortgagee. A First Mortgage is a mortgage or deed of trust which has been recorded so as to give constructive notice thereof, and which is a first lien on the Units described therein. A first Mortgagee is a holder, from time to time, of a First Mortgage as shown by the records of the office of which the First Mortgage is recorded, including a purchaser at foreclosure sale upon foreclosure of a First Mortgage until expiration of the mortgagor's period of redemption. If there be more than one holder of a First Mortgage, they shall be considered



as, and act as, one First Mortgagee for all purposes under this Declaration and the Bylaws.

I.10. Floor Plan. The floor plans of the Condominium recorded with, and by the Act made a part of, this Declaration, as the same may hereafter be amended.

I.11. Limited Common Elements. Those portions of the Common Elements allocated by operation of Section 47C-2-102(2) or (4) of the Act for exclusive use of one but fewer than all of the Units and also any Limited Common Elements specifically allocated to Units on Exhibit B.

I.12. Occupant. Any person or persons in possession of a Unit, including Unit Owners, the family members, lessees, guests and invitees of such person or persons, and family members, guests and invitees or such lessees.

I.13. Person. A natural person, corporation, partnership, trust or other entity, or any combination thereof.

I.14. Project. The Beach House Condominium project, consisting of the property, land, buildings and improvements as described in this Declaration and in Section I.15 of this Declaration.

I.15. Property. The real estate described on Exhibit A, together with all buildings and improvements now or hereafter contracted or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

I.16. Security for an Obligation. The vendor's interest in a contract for deed, mortgagee's interest in a mortgage, trustee's interest in a deed of trust, purchaser's interest under a sheriff's certificate of sale during the period of redemption, or the holder's interest in a lien.

I.17. Security Holder. Any person owning a Security for an Obligation in a Unit.

I.18. Unit. A portion of the Condominium, whether or not contained solely or partially within a building, together with its percentage of undivided interest in the Common Elements as set forth on Exhibit C. Each Unit is designated and delineated on the Floor Plans.

I.19. Unit Boundaries.

(a) The boundaries of each Unit, both as to vertical or horizontal planes, are the exterior surfaces of the Unit, as shown on the plans referenced in this Declaration, including within the Unit the paint, wall covering, shingles or other surface applied to the exterior portion of the Unit, the exterior surface of all doors and windows and the extended vertical plane of the exterior walls to the surface of the ground.

(b) Each individual Unit is identified by a separate number with a total of six (6) Units constituting the entire project. Unit No. 1 is located adjacent to Virginia Dare Trail, also known as N.C. 12, and closest to the southern property line of the property constituting the Beach House project. Unit No. 3 is the next adjacent Unit to Unit No. 1 in an easterly direction and closest to the southern property line of the Beach House project. Unit No. 5 is the Unit closest to the ocean and located closest to the southern property line of the Beach House project. Units No. 2, 4, and 6 are adjacent to Units No. 1, 3, and 5, respectively, but are located closer to the northern property line of the Beach House project. Reference is made to the plat and plans for the condominium, recorded herewith.

I.20. Unit Owner. The person or persons, including the Declarant, owning a Unit in fee simple, including contract-for-deed purchasers of a Unit, but excluding contract-for-deed purchasers of a Unit who are Security Holders, and also excluding all other



Security Holders. The term "Owner" shall also include the Owner of any undivided interest in any Unit. Certain rights created by this Declaration are affected by the percentage of interest that an Owner may hold in a Unit within the properties. The rights of an Owner as set forth within this Declaration shall not be recognized as to the holder of undivided interests smaller than One-Tenth (1/10) of an individual Unit. Any person or entity holding a smaller fractional interest than One-Tenth (1/10) of an individual Unit shall be considered an Owner collectively with the Owners of the other interests composing a One-Tenth (1/10) minimum interest in a Unit.

I.21. Member. Every person or entity who holds at least a One-Tenth (1/10) interest in a Unit composing the Beach House project. Persons or entities holding an interest smaller than One-Tenth (1/10) of a particular Unit shall hold Membership rights and privileges and shall be considered a Member only collectively with the other holders of such One-Tenth (1/10) interest. "Membership" shall refer to Membership within the Association.

I.22. Segment or One-Tenth (1/10) Interest. It is acknowledged within this Declaration that certain Units composing the Beach House project have been divided into co-ownership shares or segments, each constituting a One-Tenth (1/10) interest in an individual Unit.

## ARTICLE II.

### Submission of Property to the Act

II.1. Submission. Developer hereby submits the Property to the Act.

II.2. Name. The Property shall hereafter be known as the Beach House Condominium.

II.3. Division of Property into Separately Owned Units. Developer, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into six (6) Units and does hereby designate all such Units for separate ownership, subject, however, to the provisions of Section II.4 hereof.

II.4. Alterations of Units. Subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of Sections 47C-2-113(a) and (b) of the Act.

II.5. Limited Common Elements. The Limited Common Elements serving or designed to serve each Unit are hereby allocated solely and exclusively to each such Unit. In addition to those defined in Section I.11, Limited Common Elements include those set forth on Exhibit B and are hereby allocated to Units as shown in Exhibit B.

II.6. Unit Allocations. The allocations of each Unit of a percentage of undivided interest in the Common Elements, of votes in the Association, and a percentage of the Common Expenses, are as stated on Exhibit C. The allocation of undivided interests in the Common Elements and of the Common Expenses is according to the area of each Unit to the area of all Units. The votes in the Association are equally allocated to all Units.

II.7. 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 on Exhibit D.

II.8. 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 ownership, or (ii) imposing conditions or requirements upon developments under a different form of 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.



## ARTICLE III.

Additional Property

All of the property upon which the Condominium is constructed is set forth and described in Exhibit A to this Declaration. There are no other areas or properties available for expansion and there are no additional properties which will be added to the Condominium under the provisions of this Declaration.

## ARTICLE IV.

Easements

IV.1. Encroachments. In the event that, by reason of the construction, reconstruction, rehabilitation, alteration or improvement of the buildings or improvements comprising a part of the Property, any part of the Common Elements now or hereafter encroaches upon any part of any Unit, or any part of any Unit, now or hereafter encroaches upon any part of the Common Elements, or upon any part of another Unit, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Units so encroached upon.

IV.2. Easements Through Walls. Easements are hereby declared and granted to the Association and to such persons as are authorized by the Association, to install, lay, maintain, repair and replace any chutes, flues, ducts, vents, pipes, wires, conduits and other utility installations, and structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the boundaries of any Unit. This section shall create no obligation on the part of the Association and shall not reduce the maintenance obligations of a Unit Owner as defined in this Declaration.

IV.3. Easements to Repair, Maintain, Restore and Reconstruct. Wherever in, and whenever by, this Declaration, the ByLaws or the Act, a Unit Owner, the Association, the Board, or any other person, is authorized to enter upon a Unit or the Common Elements to repair, maintain, restore or reconstruct all or any part of a Unit or the Common Elements, such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted.

IV.4. Declarant's Easement. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, which easements shall exist as long as reasonably necessary for such purposes.

IV.5. Easements to Run With Land. All easements and rights described in this Article IV are appurtenant easements running with the land, and except as otherwise expressly provided in this Article IV shall be perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, the Association, Unit Owners, Occupants, Security Holders and any other person having any interest in the Condominium or any part of any thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article IV, whether or not specifically mentioned in any such conveyance or encumbrance.

IV.6. Dedication or Transfer of Common Areas. The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least eighty percent (80%) of the votes agree to such dedication or transfer and signify their agreement by a signed and recorded written instrument, provided that this subsection shall not preclude the board of



directors of the Association from granting easements to public authorities or others for the installation and maintenance of sewerage, utilities and drainage facilities upon, over, under and across the Common Area without the assent of the Membership when, in the sole opinion of such board, such easements do not interfere with the use and enjoyment of the Properties or are necessary for the convenient use and enjoyment of the Properties. Actions contemplated by this subsection must be consistent with the North Carolina General Statutes, Chapter 47C-3-112.

IV.7. Easements. Easements for the installation and maintenance of driveway, walkway, parking area, water line, gas line, telephone, electric power line, sanitary sewer and storm drainage facilities and for other utility installations are reserved as shown on the recorded plat. The Association may reserve and grant easements for the installation and maintenance of sewerage, utility and drainage facilities over the Properties as provided in Section IV.6 of this instrument. Within any such easements above provided for, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewerage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements. In addition, the Association shall have the continuing right and easement to maintain all sewer and sewage disposal systems, septic systems, drain fields, and water lines located on the Property, including the right to go into Units and disturb the structure and floors thereof in order to maintain those lines located within or under said Units.

#### ARTICLE V.

##### Restrictions, Conditions and Covenants

V.1. Compliance with Declaration, Bylaws and Rules and Regulations. Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the Bylaws, the Articles of Incorporation of the Association, and rules and regulations promulgated by the Board or the Association, as amended. Failure to comply shall be grounds for an action by the Association, and aggrieved Unit Owner, or any person adversely affected, for recovery of damages, injunction or other relief.

V.2. Administration of Condominium. The Condominium shall be administered in accordance with the provisions of the Act, this Declaration and the Bylaws.

##### V.3. Use Restricted; Use by Declarants.

(a) The Units shall be occupied and used by Unit Owners and Occupants for residential purposes only.

(b) No "For Sale" or "For Rent" sign or other window displays or advertising shall be maintained or permitted by any Unit Owner or Occupant on any part of the Condominium except in accordance with rules and regulations established by the Board of Directors.

V.4. Hazardous Use and Waste. Nothing shall be done to or kept in any Unit or the Common Elements that will increase any rate of insurance maintained with respect to the Condominium without the prior written consent of the board.

#### ARTICLE VI.

##### Assessments

VI.1. Assessment Liens. The Board has the power to levy assessments against the Units for Common Expenses. Such assessments shall be a lien on the Units against which they are assessed, and if any payment thereof becomes delinquent, the lien may be foreclosed and the Unit sold, or a money judgment obtained against the person liable therefore, all as set forth in the bylaws.



VI.2. Personal Liability of Transferees; State; Liability of First Mortgagee.

(a) The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of said Unit unless said delinquent assessments are expressly assumed by said transferee.

(b) Any transferee referred to in (a) above shall be entitled to a statement from the board, pursuant to Section 8.11 of the Bylaws, and such transferee's Unit shall not be subject to a lien for any unpaid assessments against such Unit in excess of the amount therein set forth.

(c) Where a mortgagee or the beneficiary of a deed of trust, or other person claiming through such deed of trust, pursuant to the remedies provided in a deed of trust, or by foreclosures or by a deed or assignment in lieu of foreclosure, obtains title to a Unit, the liability of such mortgagee or such other person for assessments shall be only for the assessments, or installments thereof, that would become delinquent, if not paid, after acquisition of title. For purposes hereof, title to a Unit shall be deemed acquired by foreclosure upon expiration of the applicable period of redemption.

(d) Without releasing the transferor from any liability therefor, any unpaid portion of assessments which is not a lien under (b) above or, resulting as provided in (c) above, from the exercise of remedies in a deed of trust, or by foreclosure thereof or by deed or by assignment in lieu of such foreclosure, shall be a Common Expense collectible from all Unit Owners, including the transferee under (b) above and the purchaser at foreclosure or such other person under (c) above who acquires ownership by foreclosure or by deed, or assignment, in lieu of foreclosure.

VI.3. Prohibition of Exemption from Liability for Contribution Toward Common Expenses. No Unit Owner may exempt himself from liability for his share of the Common Expenses assessed by the Association by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit or otherwise.

ARTICLE VII.

Management, Maintenance, Repairs, Replacements, Alterations, and Improvements

VII.1. Common Elements.

(a) By the Association. The management, replacement, maintenance, repair, alteration and improvement of the Common elements shall be the responsibility of the Association, and, subject to the provisions of Section VII.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by the Unit Owners pursuant to Section VII.1.(b) hereof. All damage caused to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense.

(b) By Unit Owners. Each Unit Owner shall pay all costs to repair and replace all portions of the Common Elements that may become damaged or destroyed by reason of his intentional acts or the intentional acts of any Occupant of his Unit. Such payment shall be made upon demand made by the Association.

VII.2. Common Expenses Associated with Limited Common Elements or Benefitting Less Than All Units.

(a) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Elements was allocated at the time the expense was incurred.



(b) In addition, the Association may assess any Common Expense benefitting less than all of the Units against the Units benefitted in proportion to their Common Expense liability.

### VII.3. Units.

(a) Each Owner shall maintain, repair and replace at his expense all interior portions of the improvements on his Unit which shall need repair, including rails, fencing and decks located on the Unit, if any, and all bathroom and kitchen fixtures, light fixtures or other electrical, mechanical or plumbing equipment, pipes and fittings serving an Owner's Unit including those which are located in a party wall, if any. Further, each Owner shall repair, maintain and replace at his own expense when necessary the heating and air conditioning systems servicing his Unit, whether located on his Unit or in the Common Area adjacent to the Unit.

(b) The Association shall provide exterior maintenance upon each Unit which is subject to assessment hereunder, as follows: paint, repair, replace and care of walks, roofs, gutters, downspouts, exterior building surfaces, trees, shrubs and other exterior improvements, including grass and other vegetation in those portions of each Unit lying outside of the residence building and patio. Such exterior maintenance shall not include glass surfaces and each Owner shall be required to maintain his own glass and his own railing, deck and fence. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Unit at all reasonable times to perform maintenance as provided in this Article. In the event that the need for maintenance, repair or replacement is caused through the willful or negligent act of the Owner, his family guests or invitees, the costs of such maintenance, replacement or repairs incurred by the Association shall be added to and become a part of the assessment to which such Unit is subject.

VII.4. Waiver of Claims. Except only as provided in Section VII.5, the Association agrees that it shall make no claim against a Unit Owner or Occupant, and each Unit Owner and Occupant agrees that he shall make no claim against the Association, the members of the Board, officers of the Association, or employees or agents of any thereof, or against any manager retained by the Board, or his or its officers, directors, employees or agents, or other Unit Owners or Occupants, for any loss or damage to any of the Property, or to a Unit or personal property therein, even if caused by the omission or neglect of any one or more of such persons and all such claims are hereby waived and released; provided that this waiver shall not apply to any such loss or damage due to intentional acts.

VII.5. Right of Entry by the Association. The Association, and any person authorized by the Association, may enter any Unit or any of the limited Common Elements in case of any emergency or dangerous condition or situation originating in or threatening that Unit or any of the limited Common Elements. The Association, and any person authorized by the Association, after reasonable notice to a Unit Owner or Occupant, may enter that Unit or any of the limited Common Elements for the purpose of performing any of the Association's duties or obligations or exercising any of the Association's power under the Act, this Declaration or the Bylaws with respect to that or any other Unit, any limited Common Elements, or the Common Elements. Notwithstanding Section VII.4, the Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the limited Common Elements allocated to the Unit Owner.

VII.6. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, including the erection of antennas, aerials, awnings, and including the enclosure of areas at grade, the placement of reflective or other material in the windows of a



Unit or other exterior attachment, until the plans and specifications showing the nature, kind, shape, heights, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the board of directors of the Association, or by an architectural control committee composed of three (3) or more representatives appointed by the board. In the event said board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. The Association shall have the right to charge a reasonable fee for receiving each application in an amount not to exceed \$25.00. Neither the board of directors nor the architectural control committee shall approve any alterations, decorations or modifications which would jeopardize or impair the soundness, safety or appearance of any Unit or the Common Area.

#### VII.7. Grounds Maintenance.

(a) Maintenance of Common Facilities. The Association shall provide maintenance to the common areas and facilities composing the project. Included within this category of maintenance shall be the driveways and roadways located upon the property; common walkways, decks and gazebos; the beach area; and other areas necessary for access and egress to and from the various portions of the property. The Association shall also maintain septic and sewage disposal systems within the project.

(b) Sewage Hookup. In the event that a central sewage system, whether publicly or privately owned and maintained shall become available to the project, the Association may, by vote of the Membership as described herein, determine to make a connection for residential buildings within the project to such central system. The decision to make such a connection and to hookup to such a central system will be made upon the vote of two-thirds (2/3) of the Membership of the Association. In such an event, the cost of hookup, including any hookup fees, installation costs, tap fees, impact fees, or other similar costs shall be born and passed and approved in the manner of a special assessment.

### ARTICLE VIII.

#### Insurance

VIII.1. Casualty Insurance. The Association shall maintain casualty insurance upon the property in the name of, and the proceeds thereof shall be payable to, the Association, as trustee for all Unit Owners and Security Holders as their interests may appear, and be disbursed pursuant to the Act. Such insurance shall be in the amount equal to not less than the full insurable value of the Property on a replacement cost basis and shall insure against such risks and contain such provisions as the Board from time to time shall determine, but a minimum shall conform in all respects to the requirements of the Act, and shall provide that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making cash settlement, such option shall not be exercisable if such restoration is prohibited pursuant to Section 47C-3-112(g) of the Act.

VIII.2. Public Liability Insurance. The Association shall maintain public liability insurance for the benefit of the Unit Owners, Occupants, the Association, the Board, the Declarant, and their respective officers, directors, agents and employees, in such amounts and with such coverage as shall be determined by the Board; provided that the public liability insurance shall be for at least One Million (\$1,000,000.00) Dollars per occurrence for death, bodily injury and property damage. Said insurance shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; insure all of such benefited parties against such liability arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the streets, sidewalks and public spaces adjoining the Condominium; and insure the Association, the Board,



the manager, if any, and their respective officers, directors, agents and employees against such liability arising out of or in connection with the use or maintenance of the Units.

VIII.3. Fidelity Coverage. Fidelity coverage shall be maintained by the Association in commercial blanket form covering each director and officer of the Association, any employee or agent of the Association and any other person handling or responsible for handling funds of the Association in the face amount of at least the greater of (i) one and one-half (1-1/2) times the estimated annual operating expenses and reserves of the Association, or (ii) the sum of three months' aggregate assessments on all Units plus the Association's reserve funds. Such bonds shall contain an appropriate endorsement to cover persons who serve without compensation. The premiums on such bonds shall be a Common Expense.

VIII.4. Other Insurance. The Association may procure such other insurance, including worker's compensation insurance, as it from time to time deem appropriate to protect the Association of the Unit Owners. If at least one Unit is subject to FNMA/FHLMC financing, the Association shall obtain and keep in force such insurance as the standards for FNMA/FHLMC approved loans shall require from time to time.

VIII.5. Insurance Trust. The Board may engage, and pay as a Common Expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds upon such terms as the board shall determine, consistent with the provisions of the Act and this Declaration.

VIII.6. Individual Policy for Unit Owners. Each Unit Owner may obtain insurance, at his own expense, affording personal property, and any other coverage obtainable, to the extent and in the amounts such Unit Owner deems necessary to protect his own interests; provided that any such insurance shall contain waivers pursuant to Section VII.4 and shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of proceeds that would otherwise be payable on the insurance purchased by the Association due to the proration of insurance purchased by a Unit Owner under this Section, such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction to the Association upon demand, and assigns the proceeds of his insurance, to the extent of such reduction, to the Association.

## ARTICLE IX.

### Co-Ownership

Certain Units within the Beach House project have been owned and developed so that the Owner of a One-Tenth (1/10) Interest in a Unit is entitled to the exclusive right to occupy the Unit during five (5) weeks of each year according to an allocation originally made and a Declaration of Co-Ownership Interests recorded in Book 373 at page 354 of the Dare County Registry. The terms and provisions of that declaration have been withdrawn by instrument recorded by the Declarant herein. The Declarant intends however, that Units within the Beach House project may continue to be occupied and used according to the rights of ownership described as "co-ownership interests" and to accomplish that purpose, the Declarant has set forth the terms and provisions under which such co-ownership rights shall be governed.

#### IX.1. Definitions.

(a) "Unit" shall all refer to a Unit or building located within the Beach House project in accordance with the same definition set forth in this Declaration.

(b) "Season Week" shall mean a one week period of right of use in a Unit to be assigned as hereafter provided. Unless otherwise provided by resolution of the board of directors of the



Association, a Season Week shall commence and end at 12:00 noon on Friday.

(c) A "Co-Ownership Interest" shall mean an undivided One-Tenth (1/10) Interest in a Unit and the right of use and enjoyment of the same in the manner provided herein.

IX.2. Exclusive Use and Occupancy. Any person or entity who shall receive title to an undivided One-Tenth (1/10) Interest in a Unit shall have the exclusive right to occupy the Unit in which the Co-Ownership Interest is conveyed to that Owner. During the time allocated to the right of occupancy for each Co-Ownership Interest, that Owner shall possess, use and enjoy, all of the rights appurtenant to each Unit in the project, including all rights and easements appurtenant to each such Unit. No Owner may occupy a Unit or exercise any other rights of ownership in respect to a Unit other than the rights granted to him during any other Season Week unless expressly so authorized by the Owner entitled to occupy the Unit during such Season Week. There shall be two (2) weeks of every calendar year reserved for the purposes of repair, maintenance, repainting, and housecleaning of the Unit and such weeks shall be owned jointly by all of the Owners holding Co-Ownership Interests in a particular Unit. All painting, maintenance, and repairs to the internal portions of the Unit, except emergency repairs, shall be confined to the two (2) weeks not allocated to any individual Owner. Each Owner shall keep the Unit and all common furnishings in good condition and repair during his Season Week and vacate the Unit at the expiration of his Season Week removing all persons and property therefrom, excluding any common furnishings. Each owner shall leave the Unit in good and sanitary condition or repair and otherwise comply with reasonable checkouts and other procedures as may from time to time be established for the use of the Unit.

IX.3. Management. Each Unit within the project which is subject to use and ownership as a co-ownership Unit shall be managed and administered by an unincorporated association of all of the Owners of Co-Ownership Interests in that Unit. Decisions on all matters affecting the affairs of such unincorporated association shall be decided by two-thirds (2/3) majority in the interest of the Owners in the Unit. Provisions of this paragraph shall apply to the management of the affairs of a particular Unit where such matters do not conflict with the affairs of the Association. On matters affecting the affairs of the Association, each owner of a Co-Ownership Interest in a Unit shall have the vote allocated to him by the other sections and provisions of this Declaration in the affairs of the Association. Where actions and decisions of the Association conflict with the management of a particular Unit, the authority of the Association shall predominate and will prevail over the actions, authorities, and decisions of the management of an individual Unit.

IX.4. Agent. Each Unit owned in common and administered under the co-ownership method of ownership as described in this Article may, by action of a two-thirds (2/3) majority in the interest of the Owners in the Unit, elect an agent for the purpose of handling the management affairs of that Unit. In such an event, the authority of the agent shall be set forth in a management agreement which shall become binding upon all of the Owners of Co-Ownership Interests in a Unit upon the consent and signature of two-thirds (2/3) majority in interest of the Owners in the Unit.

IX.5. Expenses. Each Owner of a Co-Ownership Interest or Segment in a Unit shall pay the following:

(a) The cost of all long distance telephone charges or other special services allocated to the occupancy of the Unit during such Owner's Season Week, the net cost after reimbursement by insurance from any damage to the Unit or repair and replacement of the property on account of loss or damage occurring during an Owner's Season Week or Weeks, and the cost to satisfy any expenses of any other Owners due to any intentional or negligent act or omission on the part of such Owner, his family, guests, invitees, tenants, or lessee, or resulting from his breach of any provisions of this Declaration.



(b) A share of the following costs and expenses which bear the same relationship to the whole as such Owner's undivided Co-Ownership Interest in the Unit bears to the entire ownership of the Unit:

- (i) Real property taxes and special assessments.
- (ii) Insurance premiums for fire and extended coverage insurance and liability insurance.
- (iii) Utility charges for electricity, water, sewer, telephone, and cable television.
- (iv) Common assessments and special assessments levied by the Association.
- (v) Pest control when necessary.
- (vi) Charges for maintenance and cleaning supplies and replacement costs for nondurable items consumed by the Owners in the Unit.
- (vii) Cost for ordinary maintenance repairs and replacement of appliances and fixtures.
- (viii) Cost for cleaning, maintaining, painting, and refurnishing the Unit where not otherwise included in the other costs charged to the Unit.
- (ix) Any compensation to an agent if an agent is hired and designated for the Unit.
- (x) Any amounts necessary to establish proper reserves for the foregoing items and for any other items designated by two-thirds (2/3) majority of the Owners of interests in the Unit.

(c) Any other costs and expenses elsewhere herein provided to be paid or other costs deemed necessary or desirable to insure maintenance and repair of the Unit or for the common expenses of the Association.

**IX.6. Enforcement.** In the event of nonpayment or delinquency in the payment of any sum that is due from a co-ownership Owner to the general fund for maintenance and benefits of an individual Unit, such sum may be collected from a delinquent co-ownership Owner in the same manner as dues assessments and other charges may be collected by the Association against any Owner within the project. The action to collect such delinquent accounts or payments shall be taken by the agent, when included within the authorities granted to the agent by written agreement or by two-thirds (2/3) majority of the Co-Ownership Interest in a particular Unit. Such actions shall include the right to place a lien for any unpaid sum and the cost and expenses of collection of such sums, including attorney's fees, and such liens shall be placed in the same manner as set forth in Chapter 44A of the North Carolina General Statutes. In addition, these rights shall include the right to exclude an Owner from possession of a Unit during the Season Week or Weeks assigned to that Owner if a delinquency or nonpayment occurs and to rent such delinquent Owner's time period of possession as an offset to delinquent fees, costs or assessments.

**IX.7. Establishment of Co-Ownership Interests.** Subject to all of the terms and conditions contained elsewhere in this Declaration, each Owner of a Co-Ownership Interest in a particular Unit shall have the right to occupy and use such Unit and the common furnishings of the Unit for a period consisting of five (5) Season Weeks a year which shall consist of one week in the spring season, one week in the summer season, one week in the fall season, one week in the winter season, and one week in the holiday season.

(a) Each Owner of a Co-Ownership Interest in a particular and specified Unit shall be assigned a number from one (1) to ten (10), that number determining the particular Season Week



to comprise the Owner's period of use for the calendar year. The weeks of each season are numbered consecutively from one (1) to ten (10) and an Owner's annual number will correspond to the number of each of the five (5) season weeks and holiday weeks assigned to such Owner.

(b) The holiday season is a separate season comprised of ten (10) weeks, being the weeks during which New Year's Day, Easter, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas fall, together with three (3) designated weeks to comprise a total of ten (10) weeks for the holiday season. Each such week is assigned a number from one (1) to ten (10) as the week occurs chronologically during the year to determine the season week to be assigned to each Owner.

(c) An Owner who is assigned the number one (1) for the calendar year will be assigned a period composed of the first week in the spring season, the first week in the summer season, the first week in the fall season, the first week in the winter season, and the first week in the holiday season. In a like fashion, the other Owners of that particular Unit will receive a period of use for those Season Weeks corresponding to their assigned numbers. Numbers assigned to each Owner shall be rotated among the Owners in an orderly and consistent manner so that the Owner assigned number one (1) will be assigned number two (2) for the following calendar year and other Owners being rotated in the same manner. It is intended that the allocation systems established upon acquisition of ownership according to the original Declaration of Co-Ownership Interests recorded in Book 373 at page 354 of the Dare County Registry shall continue in the same sequence and same manner as had been established prior to the withdrawal of that declaration and the recording of this Declaration.

IX.8. Incorporation of Co-Ownership Documents. In order to provide continuity and to avoid interruptions or inconvenience to the Owners of Co-Ownership Interests as defined herein, certain provisions of the original co-ownership declaration are incorporated herein and set forth as Exhibit E to this Declaration and shall apply to those Units owned in a co-ownership manner as defined in this Article. However, in no event will the provisions of such Exhibit E conflict with the terms and provisions of this Declaration and where such conflict exists, the provisions of this Declaration shall prevail and take priority.

#### ARTICLE X.

##### Casualty Damage

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 the provisions of Section 47C-3-112(d) and (g) of the Act.

#### ARTICLE XI.

##### Condemnation

In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all of any part of the property, the same shall be repaired or restored, and the awards paid on account thereof shall be used and applied in accordance with Section 47C-1-107 of the Act.

#### ARTICLE XII.

##### Termination

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



## ARTICLE XIII.

Amendment

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47C-2-108 and 47C-2-117 of the Act.

## ARTICLE XIV.

Rights of First Mortgagees:  
VA, FNMA and FHLMC Provisions

The following provisions shall take precedence over all other provision of this Declaration and the Bylaws:

XIV.1. 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 Bylaws, other rules and regulations co-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, Bylaws, other rules and regulations governing the Condominium, and the most recent annual audited financial statement (if one is prepared).

XIV.2. Successors' Personal Obligation for Delinquent Assessment. 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.

XIV.3. Rights of Action. The Association and any aggrieved Unit Owner shall have a right of action against Unit Owners and any aggrieved Unit Owner shall have a right of action against the Association for failure to comply with the regulations, and decision of the Association made pursuant to authority granted to the Association in this Declaration and the Bylaws.

XIV.4. Management and Other Agreements. Any management agreement between the Association and any professional management company 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.

XIV.5. Right of First Refusal. The right of Unit Owners to sell, transfer, mortgage or otherwise convey his interest in his Unit shall not be subject to any right of first refusal.

XIV.6. Consent of First Mortgagees. This Section 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 XIV.8 hereof, representing at least two-thirds of the votes allocated to Units subject to First Mortgages held by Eligible Mortgage Holders, or such greater requirements specified by the Act. Any amendment to the Declaration or Bylaws which changes any of the following shall require the prior written consent of Unit Owners holding at least two-thirds of the total votes in the Association and of Eligible Mortgage Holders representing at least 51% of the votes of allocated 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 has been required previously by an 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 Bylaws;
- (n) any action to terminate the legal status of the Condominium after substantial damage or destruction of condemnation; or
- (o) any provisions that expressly benefit First Mortgagees or insurers or guarantors of First Mortgages.

XIV.7. Consent of First Mortgagees or Unit Owners. This Section 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 two-thirds 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 a Declarant) holding at least two-thirds of the total votes in the Association have given their prior written approval, of such greater requirements specified in the Act or hereunder have been satisfied, the Association shall not be entitled to:

- (a) By act of omission, seek to abandon or terminate the Condominium;
- (b) change the prorata 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 prorata share of ownership of each Unit in the Common Elements;
- (c) partition or subdivide any Unit;
- (d) 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.

XIV.8. 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 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 any 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 Bylaws 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 XIV.6) 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 of amendment to the Declaration or Bylaws who does not deliver or post to the requesting part a negative response within thirty (30) days shall be deemed to have approved such request.

XIV.9. Assessments. Assessments shall be due and payable in monthly installments. As provided in Article VIII of the Bylaws and as legally required by Section 47C-3-115 of the Act, Declarant shall pay all accrued expenses of the Condominium until assessments are levied against the Units. As 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.

XIV.10. Rights of First Mortgagee; Insurance Proceeds or Condemnation Awards. With respect to First Mortgages held by or for the benefit of FNMA/FHMLC, no provision of this Declaration or the Bylaws shall be deemed to give a Unit Owner, or any other party, priority over the 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.

## ARTICLE XV.

### General Provisions

#### XV.1. Use Restrictions

(a) Land Use. All Units shall be used for residential purposes only and only one family may occupy a Unit as a residence at any one time.

(b) Nuisance. No noxious or offensive activity shall be conducted upon any Unit nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

(c) Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Unit except that dogs, cats or other household pets may be kept or maintained provided they are not kept or maintained for commercial purposes.



(d) Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Unit unless and until permission for the same has been granted by the Association.

(e) Clothes Drying. No drying or airing of any Clothing or bedding or other items shall be permitted on the grounds or outside of any Unit including porches or decks except by and through rules promulgated by the board of directors, which rules may exclude such activities completely.

(f) Garbage Disposal. All garbage shall be stored within the residence of each Owner or in the storage facilities provided for said residence. No Owner may change or supplement the garbage disposal facilities provided for such Owner's residence unless the board of directors of the Association shall first approve in writing the change or addition to the method of storage. It is provided, however, that if the public health authorities, or other public agency, shall require a specific method of garbage disposal, nothing herein contained shall prevent the compliance by Owners with obligatory public rules and regulations.

(g) Regulations. Reasonable regulations governing the use of the Common Area and external appearance of the Units may be made and amended from time to time by the board of directors of the Association; provided, however, that all such regulations and amendments thereto shall be approved by a majority vote of the Owners before the same shall become effective. Copies of such regulations and amendments thereto shall be furnished to each Member by the Association upon request.

XV.2. Conflict with the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction condition, limitation, provision, paragraph or clause of this Declaration, or of any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability of effect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstances.

XV.3. Interpretation of Declaration. Whenever appropriate singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part of which they appear.

XV.4. Captions. The captions herein are only for the convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.

XV.5. Exhibits. The exhibits referenced in this Declaration are incorporated herein by reference, whether or not they are attached hereto and recorded herewith.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first written above.

BEACH HOUSE OWNERS ASSOCIATION  
OF NAGS HEAD, INC.

BY: E. James A. Hamilton  
President

ATTEST:

Eugene F. Killeen  
Secretary

(Corporate Seal)

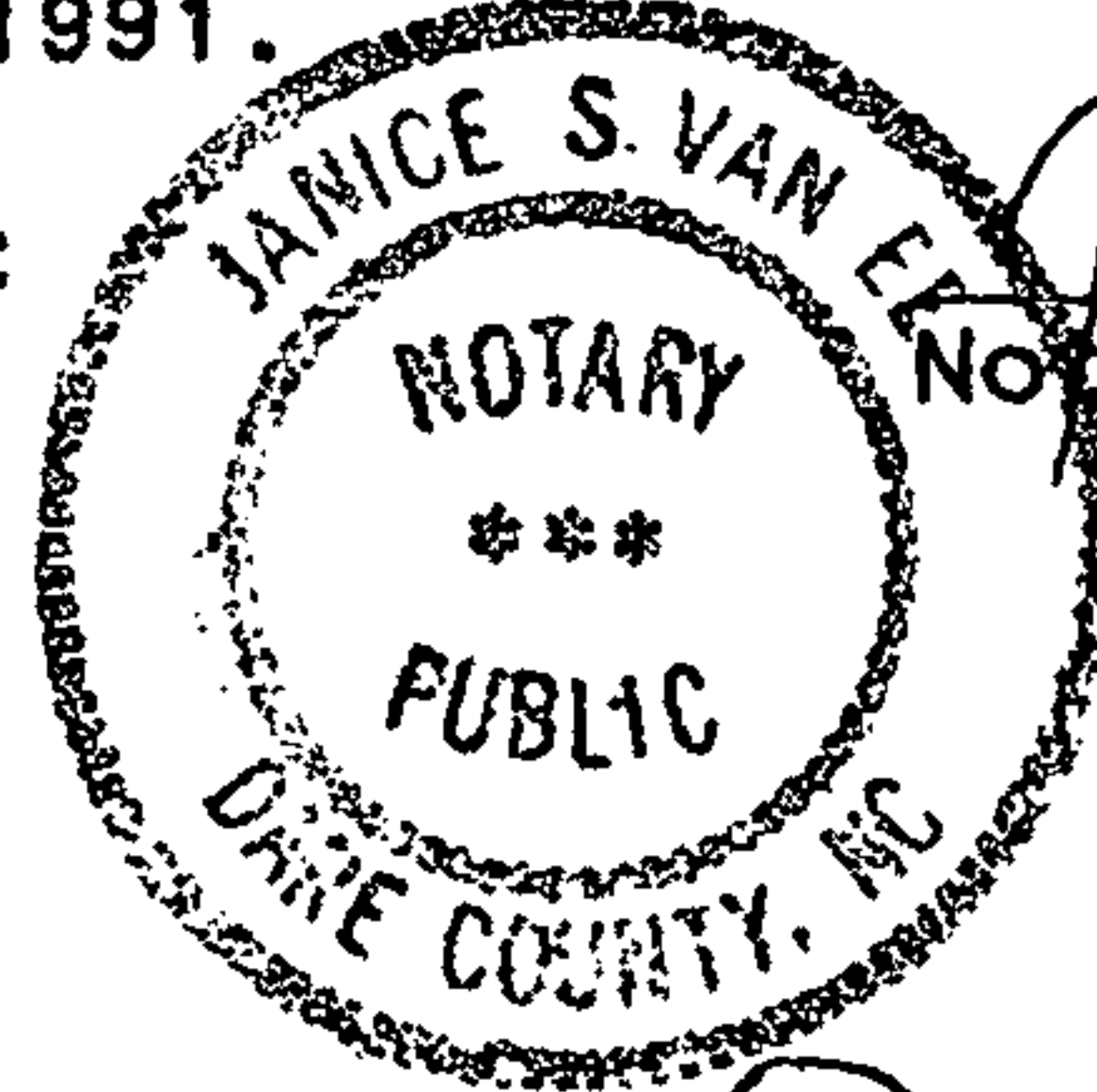




STATE OF North Carolina  
COUNTY ~~CITY~~ of Dare

I, a notary public for the aforementioned state and county do hereby certify that Eugene J. Kellaker personally appeared before me this day and acknowledged that he/she is Secretary of BEACH HOUSE OWNERS ASSOCIATION OF NAGS HEAD, INC., a North Carolina corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_ President, sealed with its corporate seal and attested by him/herself as its \_\_\_\_\_ Secretary. Witness my hand and seal, this the 25th day of June, 1991.

My commission expires: 3/24/92



Janice S. Van Ee  
Notary Public

NORTH CAROLINA  
DARE COUNTY

The foregoing Certificates of Janice S. Van Ee,  
a Notary Public of Dare Co. NC  
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.

Dennis A. Gray  
REGISTER OF DEEDS

Dama Jean Ward  
BY: DEPUTY/ASSISTANT-REGISTER OF DEEDS

Document

Unofficial Document



## EXHIBIT A

All that parcel of land located in the Town of Nags Head, Nags Head Township, Dare County, North Carolina and described as follows:

Beginning at a point in the eastern right of way of Virginia Dare Trail, a sixty foot right of way, now designated as N.C. 12, said point being located 200.00 feet on a course of South 18° 00' East from the intersection of N.C. 12 with the southern right of way of Grouse Street, a fifty foot right of way, and said point also marking the southwestern corner of Lot No. 5, Block 4, Whalebone Beach subdivision as shown on a map in Map Book 1, page 154, Dare County Registry, running thence North 72° 00' East a distance of 347.20 feet to a point, the northern terminus of a tie line referenced herein; thence continuing North 72° 00' East a distance of 79 feet, more or less, to the high water mark of the Atlantic Ocean; thence along the high water mark of the Atlantic Ocean a call represented by a course of South 20° 20' 11" East a distance of 100.08 feet to a point; thence South 72° 00' West a distance of 83 feet, more or less, to a point, the southern terminus of a tie line, which tie line has a course of South 18° 02' 45" East and a distance of 100.00 feet from the northern terminus to the southern terminus; thence continuing South 72° 00' West a distance of 347.28 feet to a point in the eastern right of way of N.C. 12; thence North 18° 00' West along the right of way a distance of 100.00 feet to the point of beginning.

Same being originally designated as Lots No. 6 and 7 and the northern one-half of Lot No. 8, Block 4, Whalebone Beaches, as shown in a map recorded in Map Book 1, page 154, Dare County Registry.

Same also shown on a survey of Beach House Condominiums prepared by Kirk R. Foreman, Registered Land Surveyor, filed as a part of the plans for Beach House Condominium in the office of the Register of Deeds for Dare County.



EXHIBIT B

LIMITED COMMON ELEMENTS

In addition to those areas which may be defined as Limited Common Elements by N.C.G.S. 47C-2-102, the following areas are also considered Limited Common Elements:

1. All areas beneath the Unit which are included within the "footprint" of the Unit. The footprint is the area, the perimeter of which is shown on the plat of the condominium for each Unit, and which is further located by extending the vertical exterior walls of the Unit to the surface of the ground.
2. All decks, stairs, landings and walkways, constructed as a part of the Unit but located outside of the perimeter of the Unit walls.
3. That portion of the driveway or sidewalk which is adjacent to a Unit and which is not part of the central common drive.



EXHIBIT C

I. Votes.

Each Unit shall have an equal vote in the affairs of the Association and the condominium. There shall be one vote assigned to each Unit for a total of six (6) votes.

For each Unit which is owned in a co-ownership method of ownership, there shall be a total of ten (10) votes to be cast as to the affairs of that Unit, with each one-tenth (1/10) interest entitled to one vote in the affairs of that Unit. The internal affairs of the Units dedicated to co-ownership use are governed by Article IX of this Declaration and by the provisions of Exhibit E. Nothing in this paragraph will alter the allocation of one vote for each Unit in the affairs of the condominium.

II. Percentage of Interest in Common Elements.

Each Unit is allocated a one-sixth (16.6%) undivided interest in the common elements and a one-sixth (16.6%) share of the common expenses.



## EXHIBIT D

## LIENS, DEFECTS, ENCUMBRANCES

1. All Units are subject to the effect of this Declaration, the easements established herein, and the rights of others in and to the common properties as defined by this Declaration.
2. Each Unit is subject to any mortgage lien or deed of trust which may encumber or effect such Unit but this Declaration does not create any such lien.
3. The Property is subject to the general service or utility easements existing for the provision of power, water or similar utility services. This Declaration authorizes but does not create any such easements other than those previously existing.
4. The lien of ad valorem taxes for Dare County and the Town of Nags Head shall continue to apply to each Unit.
5. The provisions of any zoning or other municipal ordinance affecting the use of the property shall continue to apply to all Units.
6. The provisions of this Declaration provide for ownership of Units under a co-ownership method which meets the definition of a time share as defined by N.C.G.S. 93A. Time share sales and ownership are regulated by that chapter.
7. Each of the six (6) Units in the Beach House Condominium can be sold, developed, owned or transferred under a co-ownership method of ownership as defined in this Declaration. Each Unit can be divided into a maximum of ten (10) shares or interests. The maximum number of time shares that could be created in the project is sixty (60).
8. The duration of the time shares, unless sooner terminated by consent or action of the owners of a Unit, is the same as the duration of the condominium. The duration of the condominium is in perpetuity.
9. The Association's lien for assessments is not limited by the creation of the time shares except that the Association may choose to pursue the assessment against individual time share interests rather than the entire Unit.
10. Future sale by a Unit Owner of time share interests may be subject to registration requirements of N.C.G.S. 93A.



## EXHIBIT E

The following paragraphs apply to the internal affairs and management of any Unit in the condominium which is owned in a co-ownership manner:

11. Enforcement of Restrictions. In the event that any Owner should fail to comply with any of the provisions of this Declaration, the Agent or any other Owner or Owners may bring action for damages, or to enjoin the violation or specifically enforce the provisions of this Declaration, or to enforce any statutory or contractual lien or lien provided herein, including foreclosure of any such lien and the appointment of a receiver for any Owner or take possession of the Co-Ownership Interest of any Owner. In any such legal proceeding, the prevailing party shall be entitled to costs and reasonable attorneys' fees. All sums payable hereunder by any Owner shall bear interest at 15% per annum from the due date, or if advanced or incurred by any other Owner or by the Agent and provided herein to be repaid, from 10 days after repayment is requested.

The aforesaid remedies shall be cumulative and in addition to all other remedies which may be available at law or in equity; provided, however, that no breach of any provision hereof by any Owner or by Agent or failure of any Owner or Agent to comply with any provision hereof shall permit or empower any other Owner to terminate any such provision or excuse any such breach or failure, and each Owner shall continue to perform and comply with and hold his Co-Ownership Interest subject to all of the provisions of this Declaration notwithstanding any such breach or failure.

12. Lien on Interests. Each Owner shall have a lien, in the nature of a deed of trust with a private power of sale, on the interest of each other Owner in the Dwelling and Lot and Common Furnishings as security for the prompt and faithful performance by such other Owner of the obligations under this Declaration and payment of costs of enforcement and reasonable attorneys' fees; provided, however, that, as against any transferee, mortgagee or beneficiary of an Owner's interest acquiring all or any interest in such Owner's interest by deed, mortgage or deed of trust given by such Owner for valuable consideration and accepted by the transferee, mortgagee or beneficiary without notice of default in the payment or performance secured, no such lien shall be effective to secure any past due payment or performance in default at the time of recording such deed, mortgage or deed of trust except to the extent that notice of default in the payment or performance has been given at the time of recording such deed, mortgage or deed of trust by the prior recording of a notice of lien recorded within the immediately preceding 24 calendar months in the office of the Clerk of Superior Court of Dare County, which notice of lien describes the Co-Ownership Interest affected and sets forth the name of the record Owner thereof and recites that the particular payment or performance is or may be in default. The lien herein created may be enforced by sale by any Owner or by the Agent, as agent and attorney-in-fact for any Owner or Owners, and the delinquent Owner's interest in the Dwelling and Lot and Common Furnishings may be sold at a sale conducted in accordance with the provisions of North Carolina General Statutes Chapter 44A, Article 2, Part 1, as amended, or in any other manner permitted by law. The purchaser at any foreclosure sale shall obtain title subject to the provisions of this Declaration. Either the Agent or any Owner or Owners may bid at the foreclosure sale and may hold, lease, mortgage or convey any interest in the Dwelling or Common Furnishings acquired by such sale. The aforesaid



EXHIBIT E (cont.)

lien and right of foreclosure shall be in addition to and not in substitution for all other right and remedies which the Owners or Agent may have hereunder.

13. Protection of Interest. No Owner shall permit his interest in the Dwelling, Lot or Common Furnishings to be subject to any lien (other than the liens of current real property taxes and the current and future installments of special district assessments), the enforcement of which may result in a sale or threatened sale of the interest of any other Owner in the Dwelling, Lot or Common Furnishings or any part thereof, or in any interference with the use or enjoyment thereof by any other Owner; and in the event that the sale of the entire Dwelling, Lot or Common Furnishings or the interest of any Owner or any part thereof, or the use and enjoyment of any thereof by any Owner be threatened by reason of any lien against the interest of any other Owner, or proceedings be instituted to affect any such sale or interference, any Owner or Owners acting on his or their own behalf or through the Agent, or the Agent acting on behalf of any one or more Owners, unless promptly indemnified to his or their satisfaction, but shall not be required to pay or compromise the lien without inquiry into the proper amount or validity thereof and, in that event, the Owner whose interest was subject to such lien shall forthwith repay the amount so paid or expended to the Owner or Owners or Agent, whomsoever shall have paid or compromised the lien together with such reasonable attorneys' fees and related costs as he or they may have incurred.

No Owner shall permit his interest in any funds from time in the possession of the Agent to be subjected to any attachment, lien claim or charge or other legal process and each shall promptly restore any funds held by the Agent in respect of his Co-Ownership Interest to the extent depleted by reason of the assertion of any such attachment, lien claim, charge or other legal process and reimburse the Agent for all reasonable attorneys' fees or other costs incurred in respect thereof.

14. Sale of Co-Ownership Interest. If an Owner desires to sell his Co-Ownership Interest, such Owner shall, in writing, first notify the Agent of his intention to do so. An Owner may not sell to any subsequent purchaser less than the Co-Ownership Interest, such Owner shall, in writing, first notify the Agent of his intention to do so. An Owner may not sell to any subsequent purchaser less than the Co-Ownership Interest as described herein.