

Prepared by and return to:  
Daniel D. Khoury, Attorney at Law  
Vandeventer Black LLP  
P.O. Box 1042  
Kitty Hawk, NC 27949

Filed Book: 1372 Page: 162 Doc Id: 6032830  
05/08/2001 01:27PM Receipt #: 27238  
Doc Code: DECL  
BARBARA M GRAY, REGISTER OF DEEDS DARE CO, NC



6032830  
Page: 1 of 22  
05/08/2001 01:27PM

## **DECLARATION OF PROTECTIVE COVENANTS FOR WIND OVER WAVES SUBDIVISION**

THIS DECLARATION OF PROTECTIVE COVENANTS, made this 23rd day of March, 2001 by Wind Over Waves, LLC, a North Carolina Limited Liability company, hereinafter referred to as the "Declarant;"

### **RECITALS:**

1. The Declarant is the owner of certain real property located in the Village of Salvo, on Hatteras Island, Dare County, North Carolina and more particularly described in 2.01 herein and said property being hereinafter referred to as "Wind Over Waves" and the "Subdivision" herein; and

2. The Declarant desires to provide for the preservation of the values of Wind Over Waves and, to this end, desires to subject the real property described in Section 2.01 to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are, for the benefit of said real property and each owner thereof; and

3. The Declarant desires the development of Wind Over Waves be patterned upon Architectural Styles which incorporate coastal theme architecture by incorporating design and building materials as more particularly set forth within those Architectural Guidelines of Article V herein for the purpose of protecting the value and desirability of Wind Over Waves;

4. The Declarant may develop Wind Over Waves into Phases by annexation as more particularly set forth in Section 2.02 herein and will subject those portions of that property described in Section 2.02 together with any future Phases to this Declaration of Protective Covenants; and

5. To accomplish the objectives stated within these Recitals, the Declarant believes it is in the best interest of Wind Over Waves for it to maintain a significant role in the implementation of the Subdivision and has therefore retained certain rights and will exercise control in the development until the developmental process has been completed;

NOW, THEREFORE, in consideration of the foregoing recitals, the provisions of which are a substantive part of this Declaration, and other good and valuable consideration, all that property more particularly described in Section 2.01, and any



for the use or enjoyment of the Members. Common Area does not include any reference to "Open Space" as shown on the Subdivision Plat.

Section 1.11 "Common Expenses" means expenditures made or financial liabilities of the Association, together with any allocation to reserves.

Section 1.12 "Common Expense Liability" means the liability for common expenses allocated to each lot.

Section 1.13 "Declarant" shall mean Wind Over Waves, LLC, a North Carolina Limited Liability Company and their successors, transferees and assigns.

Section 1.14 "Declaration" shall mean and refer to the Restatement and Amended Declaration of Protective Covenants for Wind Over Waves Subdivision.

Section 1.15 "Dwelling Unit" shall mean and refer to any improved property intended for use and occupancy by a single household.

Section 1.16 "Governing Documents" shall refer to this Declaration, the Articles of Incorporation and Bylaws of the Association.

Section 1.17 "Wind Over Waves" or "Wind Over Waves Subdivision" shall refer to all properties of Wind Over Waves Subdivision either by this or by Declaration.

Section 1.18 "Improvements" shall mean and refer to any additions to a Lot including a dwelling, garage, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements and any other construction which has been approved by the Architectural Standards Committee of Wind Over Waves.

Section 1.19 "Living Area" shall mean and refer to enclosed heated covered areas within a Dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

Section 1.20 "Lot" shall mean and refer to any separately numbered plot of land shown upon now or subsequently recorded on the Subdivision Plat Wind Over Waves Subdivision.

Section 1.21 "Member" shall mean and refer to every person or entity who holds membership or voting rights in the Association.

Section 1.22 "Open Space" shall mean and refer to approximately 10.06 acres as shown on a Subdivision Plat situated to the West of Lots: 18, 19, 20, 21, 22, 23, 24, 25, 32, 33, and 34 and bounded on the West by the Pamlico Sound, the fee simple title of which has been retained in ownership by the Declarant.

Section 1.23 "Owner" shall mean and refer to record owner of a lot in Wind Over Waves.

Section 1.24 "Period of Declarant Control" shall mean and refer to the period of time commencing on the day the Declaration is recorded in the Office of the Register of Deeds of Dare County and continuing until the earlier of: (i) such time as Declarant shall cease to own at least one percent (1%) of the lots shown in the initial filing; provided, however, if after the expiration of such period of time, there are annexations to Wind Over Waves Subdivision and Declarant shall own more than one percent (1%) of the lots shown in Wind Over Waves Subdivision as amended by the terms of such annexation, then such period of time shall be reinstated and continue until the earlier of: (i) ten (10) years from the date this Declaration is recorded in the Register of Deeds of Dare County, North Carolina; or (ii) such time as Declarant or any successor in interest shall cease to own at least one percent (1%) of all lots within Wind Over Waves Subdivision.

Section 1.25 "Person" means a natural person, corporation, or a business trust, estate, trust, partnership, association, joint venture, government.

Section 1.26 "Special Declarant Rights" means rights reserved for the benefit of the Declarant including, without limitation, any right (i) to complete improvements indicated on plat and plans filed with the Declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising, and models; (iv) to use easements through the common elements for the purpose of making improvements within Wind Over Waves or within real estate that may be added to Wind Over Waves by annexations; (v) to make Wind Over Waves part of a larger subdivision; (vi) to make a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any Period of Declarant control.

Section 1.27 "Subdivision Plat" shall refer to that final plat of Wind Over Waves Phase I recorded in Plat Cabinet E, Slide 440 of the Public Registry of Dare County, North Carolina.

Section 1.28 "Supplemental Declaration" shall mean an amendment or supplement to this Declaration which subjects additional property in Phases to this Declaration.

## ARTICLE II

### STATEMENT OF SUBMISSION

Section 2.01 **Submission of Property**. The real property which shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the Governing Documents shall consist of the following:

- (a) All lots shown on that plat entitled "Final Plat of Phase I, Wind Over Waves Subdivision," which appears of record in the Office of the Register of Deeds of Dare County, North Carolina in Plat Cabinet E, at Slide 440 (the "Subdivision Plat");

- (b) Common Areas: All designated streets and those designated pedestrian easements for access to Pamlico Sound.

Section 2.02 **Annexation by the Declarant.** During the Period of Declarant Control, the Declarant reserves the right to add any real property contiguous to or in the near vicinity of Wind Over Waves Subdivision without the consent of the Members. Declarant shall have no obligation to add any additional property nor shall Declarant have any obligation of any kind to annex any additional property in any sequential order. Annexations by Declarant shall be evidenced by the filing of a Supplemental Declaration in the office of the Public Registry of Dare County, North Carolina which shall submit the annexed property to the terms and provisions of the Governing Documents of Wind Over Waves. Declarant's right of annexation during the Period of Declarant Control shall include the right to add additional Common Areas and upon any said dedication and/or conveyance of said additional Common Area property to the Association, such Common Area additional property shall be held and maintained by the Association as Common Area.

Section 2.03 **Annexation by Members.** Except as permitted by Section 2.02 additional property may be annexed to Wind Over Waves only with the consent of the Members entitled to two-thirds (2/3) of the votes of the Association for voting by person or proxy at meeting; provided, during the Period of Declarant Control the Declarant must also consent to such actions.

### ARTICLE III

#### PROPERTY RIGHTS

Section 3.01 **Owner's Easements of Enjoyment.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any amenity situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights by an Owner for any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;
- (c) the right of the Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes in the Association, to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Association's Board; provided, however, no such dedication or transfer shall be effective unless an

instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded; provided further that for so long as Declarant shall own any portion of Wind Over Waves or shall have the right to annex additional properties pursuant to Article II, Section 2.02 hereof, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances;

- (d) the right of the Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes in the Association, to dedicate to any public agency, authority or utility, or to transfer to any other party, fee simple title to all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances; and further provided for so long as the Declarant shall own any portion of Wind Over Waves or shall have the right to annex additional properties pursuant to Article II, Section 2.02 hereof, Declarant must also consent to such action.
- (e) the right of the Association to impose rules and regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area; and
- (f) the right of the Association to borrow money for the purpose of improving the Common Area and facilities thereon and, with the consent of the Members entitled to cast at least eighty percent (80%) of the votes of the Association, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association) provided, however, no mortgage, encumbrance or hypothecation or foreclosure of the lien thereby created, shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances, provided further that for so long as Declarant shall own any portion of the Wind Over Waves Subdivision or shall have a the right to annex additional properties pursuant to Article II Section 2.02 hereof, Declarant must also consent to such action.

Section 3.02 **Easements for Declarant.** As long as the Declarant retains ownership of any Lots within the Wind Over Waves Subdivision, Declarant shall have alienable and transferable right and easement, for purposes of ingress and egress of all roads within the Subdivision for the purpose of constructing any improvements in and to the Lots and for installing, maintaining, repairing and replacing such other improvements to the Wind Over Waves Subdivision which may be undertaken by Declarant but for which in no event shall Declarant have any obligation to do any of the foregoing.

Section 3.03 **Easements for Health and Safety.**

Declarant reserves unto itself, its successors and assigns, perpetual, alienable and releasable easements within the Wind Over Waves Subdivision and the right on, over and under the ground to cut drainways for surface water and make any grading of the soil whenever and wherever such action may appear to Declarant to be necessary to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

Section 3.04. **Maintenance Easement.** There is hereby reserved for the benefit of Declarant, its respective agents, employees, successors and assigns, the right to enter upon any Lot, such entry to be made by personnel with tractors or other suitable devices, for the purposes of mowing, removing, clearing, cutting or pruning underbrush, weeds or unsightly growth for the purpose of building or repairing any land contour or other earth work which in the opinion of the Declarant or its agents detracts from or is necessary to maintain the overall beauty, ecology, setting and safety of the property. Such entrance shall not be deemed as trespass. Declarant, and its successors, and/or assigns or designees may likewise enter upon any Lot to remove any trash which is collected without such entrance and removal being deemed as trespass. The provisions of this paragraph shall not be construed as an obligation on the part of the Declarant and/or any designee of Declarant to undertake any of the foregoing.

Section 3.05. **Environmental Easement.** It is hereby reserved for the benefit of Declarant, and its respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all Lots for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated by any governmental entity or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

Section 3.06. **Restricted Access.** Access for purposes of ingress and egress to all lots in Phase I of Wind Over Waves Subdivision shall be to and from

North Carolina Highway 12 via Otter Way and specifically, access to lots 1 through 9 inclusive of Phase I of Wind Over Waves Subdivision shall be via Otter Way via N. Sand Dollar Court. Direct access to lots 1 through 9 from North Carolina Highway 12 is strictly prohibited.

**Section 3.07. Shared Access to the Atlantic Ocean and Pamlico Sound.**

Subject to the provisions of that Agreement filed June 14, 1972 in the office of the Public Registry of Dare County in Book 132 at Page 47 between W. Benton Pipkin et al. (predecessor in title to the Declarant) and George Goldberg (principal in the future development of Hatteras Colony at Salvo) for the benefit of those properties subsequently developed as Hatteras Colony at Salvo and that property now known as Wind Over Waves, reservation was made for common access to the Atlantic Ocean and Pamlico Sound (the "Mutual Access Agreement"). In accord with the Mutual Access Agreement, the lot owners of Hatteras Colony at Salvo shall have the right of ingress and egress over streets of Phase I of Wind Over Waves with the purpose of having access to that pedestrian easement situated between lots 22 and 23 for purpose of access to the Pamlico Sound. The property owners in Phase I of Wind Over Waves shall have rights of ingress and egress over the private streets of Hatteras Colony at Salvo for the purpose of access to the Atlantic Ocean via those designated Beach Accesses situated between lots 34 and 22 on the North and lots 35 and 20 on the South in Section A as more particularly described in Map Book 2 at Page 262 of the Dare County Registry; between lots 7 and 12 and 13 in Section B as more particularly described in Map Book 3 at Page 25 of the Dare County Registry; between lots 2 and 3 in Section C as more particularly described in Map Book 3 at Page 79 of the Dare County Registry; between lots 4 and 5 in Section D as more particularly described in Map Book 3 at Page 145 of the Dare County Registry and between lots 24 and 25 in Section E, as more particularly described in Map Book 4 at Page 13 of the Dare County Registry.

**ARTICLE IV**

**MAINTENANCE AND INSURANCE**

**Section 4.01 Maintenance.** Each Lot Owner shall be responsible for all maintenance and repair of his Lot and/or Dwelling Unit together with all other improvements therein and all landscaping grounds on and within the Lot. Each Owner shall be responsible for maintaining his Lot in a neat, clean and sanitary condition and such responsibility shall include the maintenance and care of all exterior surfaces of all improvements and all trees, shrubs, hedges, walkways, driveways and other landscaping consistent with site plan and plans approved by the ASC.

**Section 4.02 Driveway Culverts.** Each Lot Owner when making a driveway connection to street shall preserve the existing swale or provide a suitable drainage culvert so as to allow for the unimpeded water movement in order to maintain the integrity of the stormwater swale. Such maintenance by the Owners, removal of sediments within the swales, as needed and upkeep of the vegetation cover on a periodic, as required, basis. Vehicular traffic and the parking of any vehicles are strictly prohibited within the stormwater's swales.

**Section 4.03. North Carolina Division of Environmental Management Water Quality Section Stormwater Regulations.** As a condition to the North



Carolina Stormwater Management Permit No. SW7000916 issued by the Division of Water Quality for Wind Over Waves Subdivision, the following covenants may not be changed or deleted without the consent of the North Carolina Division of Environmental Management Water Quality Section:

(a) The allowable built-upon area per lot shall not exceed that square footage designated on Exhibit A attached hereto and incorporated herein by reference, inclusive of that portion of the right-of-way between the front lot line and the edge of the pavement, structures, walkways of brick, stone, slate, not including wood decking.

(b) Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with any development except for average driveway crossings, is strictly prohibited by any persons.

**Section 4.04 Exterior Maintenance.** In addition to the maintenance of the Common Areas by the Association and after thirty (30) days written notice to any Owner which shall specify the required maintenance, the Association shall have the right but not the obligation to provide (a) maintenance upon any Lot and (b) maintenance upon any Dwelling Unit, which is subject to assessment under Article VII hereof. Such maintenance includes but is not limited to painting, repairing, replacing and care of roofs, gutters, downspouts, removal of signs in violation of this Declaration, and exterior improvements of any Dwelling Unit. Also, such maintenance may include mowing, trimming and cleanup on any Lot. The cost of any such maintenance shall be assessed against the lot or Dwelling Unit upon which such maintenance is done and shall be added to and become part of the regular annual assessment or charge to which Lot or Dwelling Unit is subject and, as part of such regular annual assessment or charge, it shall be a lien against any such Lot or Dwelling Unit as heretofore defined and limited, and a personal obligation of the Owner and shall continue to become due and payable in all respects as provided herein.

**Section 4.05 Insurance on Dwelling Units.** Each Owner of any Dwelling Unit within Wind Over Waves, by acceptance of a deed therefore, whether or not it shall be expressed in said deed or by exercise of any act of ownership, is deemed to covenant:

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

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

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

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

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

## **ARTICLE V**

### **ARCHITECTURAL STANDARDS AND USE RESTRICTIONS**

Section 5.01 **Purpose.** In order to protect the natural beauty of Wind Over Waves and to protect property owners within Wind Over Waves, from depreciation of values that could be caused by poor design and failure of materials, inharmonious color schemes haphazard location of improvements, Lots within Wind Over Waves and all improvements located thereon shall be subject to the restrictions set forth in this Article V. Every grantee of any interest in Wind Over Waves by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article V.

#### **Section 5.02 Architectural Standards Committee.**

(a) **Membership:** The Architectural Standards Committee (the "ASC") shall be that ASC appointed by the Declarant during the Period of Declarant Control and thereafter appointed by the Board.

(b) **Procedure:** At least thirty (30) days prior to the proposed commencement of any construction, the plans shall be submitted to the ASC. The ASC's approval, disapproval or waiver as required in these covenants shall be in writing and the decision of a majority of the ASC in case of any disagreement among ASC members as to the approval, disapproval or waiver by the ASC shall be controlling. In the event the ASC or its designated representatives fail to approve or disapprove within thirty (30) days after plans have been received by it, approval of the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with. Further, in the event any construction is commenced on any Lot without submission to the ASC of the plans with respect thereto, and no action or suit is instituted against the Owner of such Lot by the Association or any Owner of any other Lot constituting a portion of the Subdivision within ninety (90) days after the foundation of any building being constructed on any such Lot is completed, then, and in any such event, approval by the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with.

#### **Section 5.03 Approval of Plans.**

(a) **Submission of Plans.** No building, wall, driveway, swimming pool, tennis court, 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 the Architectural Standards Committee (hereinafter referred to as the "ASC"). Before commencing such review, a Lot Owner shall submit to the ASC three (3) completed sets of plans

and specifications, including, but not limited to: foundation plan, floor plan or plans, the four directional elevations, a schedule of proposed exterior colors and material, shingle colors, grade and weight, plan showing driveway, parking, and proposed commencement date of construction and expected completion of improvement. The ASC shall have the absolute and exclusive right to refuse to approve any such plans and specifications which are not suitable or desirable in the opinion of the ASC for any reason, including purely aesthetic reasons which, in the sole and uncontrolled discretion of the ASC, shall be deemed sufficient. If construction of any improvement required to be approved shall not have been begun before the expiration of six (6) months following approval, said approval shall be void and of no effect. In such event, the plans of such improvement shall be resubmitted to the ASC for reconsideration and the ASC may, in its discretion either confirm its earlier approval of plans or disapprove. All plans must be in compliance with those Guidelines for Building and Development administered by the ASC which as of the date of this Declaration are those guidelines set forth in Section 5.03(c) herein.

(b) Review Fee to Declarant. The Owner must submit a non-refundable review fee of \$200.00 to the Declarant and a security deposit in the amount of \$500.00. Subsequent to the Period of Declarant Control, the review fee shall be submitted to the Association. The Security Deposit will be refunded to the owner in a timely manner after the owner has complied with the Guidelines for Building and Development and has notified the Association that construction on the property has been completed.

(c) Guidelines for Building and Development.

1. The Declarant shall prepare the initial design development guidelines and application of review procedures, which shall be applicable to all construction activities within Wind Over Waves. Each applicant acknowledges that composition of the ASC will change from time to time and that decisions regarding aesthetic matters and interpretation and application may reasonably vary from time to time. The approval of the ASC of any proposal or plans or specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ASC, shall not be deemed to constitute a waiver of any rights with whole approval consent as to similar proposals, plans and specifications.

2. No Dwelling Unit which has an area of less than 1,800 square feet, exclusive of porches, breezeways, steps and garages, shall be erected or placed or permitted to remain on any non-soundfront lot nor shall any Dwelling Unit which has an area of less than 2,000 square feet, exclusive of porches, breezeways, steps or garages, shall be erected or placed or permitted to remain on any Soundfront lot.

3. Entrance and yard lighting shall be small wattage, low level ground lighting. High intensity flood lighting from poles or dwellings is not permitted unless specifically approved in writing by the ASC.

4. Maximum height shall be in accordance with the Dare County Zoning Ordinance.

5. Drives shall not exceed eighteen (18) feet in width at connection to streets, paved with concrete, asphalt or bricks. Colored drives will not be approved

(red, green, etc.). Parking spaces under houses, in garages or carports or in driveways will be acceptable.

6. A landscaping plan must be submitted in accord with the requirements of Section 4.04 herein.

Ordinance.

8. Signs: Only the following signs are permitted:

(a) Permanent Owner Identification - 8" X 30" with Owner's name or adopted name with colors to be approved.

(b) Real Estate Sales or Rentals - One 2 square foot Realtor's "For Sale" sign and/or one 12" X 24" Realtors "For Rent" sign allowed for each property.

(c) Contractor Sign - shall not be greater than six square feet and shall be removed when a Certificate of Occupancy is issued.

(d) Marketing Signage - During the Period of Declarant Control, the Declarant shall have the right to locate signs and/or flags indicating the location of sales and rental centers, any recreational facilities and amenities and such other information as may be required on any lot which the Declarant locates or needs a marking medium.

9. Utility lines - All water, sewer, electrical and cable television lines are to be installed underground.

10. Mail boxes and newspaper receptacles will be of standardized design approved by the ASC.

11. Vents, Pipes, Air-Conditioning Equipment, Down Spouts and Lights - No vent or other pipes or appendages may extend from the front of any Dwelling Unit unless screened from public view by a screening material or shrubbery approved by the ASC. Exterior air-conditioning equipment and heating equipment must be screened from public view by a screening material or shrubbery approved by the ASC. Down spouts and gutters must be so constructed as to not promote the erosion of the soil on any lot. Exterior spotlighting shall be directed so as not to cast light directly on another Dwelling Unit.

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

13. Sewage Disposal – Prior to the occupancy of any Dwelling Unit located in Wind Over Waves, proper and suitable provisions shall be made by the Owner for the disposal of sewage by means of a septic tank or tanks constructed on the Lot, which will be constructed, maintained and used only in accordance with local and state laws and regulations. In the event that a community or municipal sewage system is constructed then each Owner will pay their pro rata share of the associated costs.

14. Tree Cutting – Trees measuring three (3) inches or more in diameter at a point two (2) feet above the ground and any flowering trees or shrubs above five (5) feet in height may not be removed from Wind Over Waves without written approval of the ASC unless located within five (5) feet of a Dwelling Unit, or site for such Dwelling Unit, septic tank, drainfield, swimming pool, driveway or walkway.

15. Vegetation – No existing vegetation or sand dunes shall be disturbed during construction without the express written consent of the ASC. The ASC shall require written proposals for the restabilization of any such disturbed area. Any vegetation disturbed during construction shall be repaired to the satisfaction of the ASC prior to Owner applying for an occupancy permit. However, the ASC may not approve the alteration of any vegetation, swale, or dune shown on the plans approved by the Department of Environment and Natural Resources, Division of Water Quality without submitting a revision to Wind Over Waves' permit.

(d) Variance. The ASC may from time to time grant the Owners of the property in Wind Over Waves a waiver or variance of the provisions of this Declaration. The conditions under which such a waiver or variance may be granted shall be in the total discretion of the ASC. The expressed purpose of the powers as described in the paragraph is to enable the committee to alleviate hardships created by the terms of this Declaration under circumstances which are beyond control or fault of the parties and would create irreparable harm or unnecessary hardship without such action; or under conditions where title to the property in question is clouded, encumbered or detrimentally affected by the existence of conditions which cannot otherwise be corrected.

(e) Procedure: At least thirty (30) days prior to the proposed commencement of any construction, the plans shall be submitted to the ASC. The ASC's approval, disapproval or waiver as required in these covenants shall be in writing and the decision of a majority of the ASC in case of any disagreement among ASC members as to the approval, disapproval or waiver by the ASC shall be controlling. In the event the ASC or its designated representatives fail to approve or disapprove within thirty (30) days after plans have been received by it, approval of the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with. Further, in the event any construction is commenced on any Lot without submission to the ASC of the plans with respect thereto, and no action or suit is instituted against the Owner of such Lot by the Association or any Owner of any other Lot constituting a portion of the Subdivision within ninety (90) days after the foundation of any building being constructed on any such Lot is completed, then, and in any such event, approval by the ASC will not be

required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with.

**Section 5.04 Approval Not a Guarantee.** No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as presenting or guaranteeing that any Dwelling Unit or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, nor the Architectural Standards Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article V, nor any defects in construction undertaken pursuant to such plans and specifications.

**Section 5.05 Use of Lots and Dwellings Units.** No Lot shall be used except for residential purposes (with the exception of sales center, office, building or model home constructed or to be used by the Declarant). Further, no "Model Home" or "Open House" type of operation shall be allowed without the express written permission of the Association. No lot or dwelling unit shall be used for business, manufacturing or professional purposes except for those home occupations as may be approved by Dare County. No noxious or offensive trade or activity shall be carried out upon any lot or within any dwelling unit, nor shall anything be done thereon which may be or become an annoyance or a nuisance to other Owners.

**Section 5.06 Exterior Appearance.** No fence, wall, hedge, or mass planting shall be permitted except upon approval by the ASC as to location, style, design and materials. Any unenclosed garages or carports must be adequately screened from street views. Further, no foil or other reflective material shall be used on any windows for sunscreens, blinds, shades or other purposes nor shall any window-mounted heating or air-conditioning units be permitted.

**Section 5.07 Antennas.** Except for 'dish' antennas designed to receive direct broadcast satellite service, including direct-to-home satellite service, one meter (39") or less in diameter, antennas designed to receive video programming services via MMDS (wireless cable), no outside antennas or satellite dishes and no free standing transmission or receiving towers shall be erected on any Lot within Wind Over Waves without the prior written permission of the ASC. Except as otherwise reasonably required in order to receive the intended signal, any satellite dish erected on any Lot shall be affixed to the Dwelling, shall be a color which blends with its surrounds, shall have a mast only as high as reasonably necessary to receive the intended signal and shall not be visible from that street that accesses the Lot.

**Section 5.08 Animals and Pets.** Animals, livestock or poultry of any kind shall not be raised, bred or kept on any Lot except dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and provided that they are under the control of their owners at all times.

**Section 5.09 Prohibited Structures.** No structure of a temporary character, house trailer of any kind, tent, shack, garage, mobile home, barn or other outbuilding shall be used, placed or allowed on any Lot or building site of land at any time either temporarily or permanently, except such temporary structures as may be necessary for

the storage of materials by or for the convenience of workmen and contractors during the erection of residences upon said Lots. No temporary structure of any kind, including those hereinabove set out shall be used on any Lot or site at any time as a residence either temporary or permanently. "Modular Homes" or similar types of dwellings shall not be constructed or placed upon any Lot or building site.

**Section 5.10 Motor Vehicles, Trailers, Etc.** Each Owner shall provide for parking of automobiles off the streets and roads within the Wind Over Waves Subdivision prior to occupancy of any Dwelling Unit. There shall be no outside storage or parking upon any Lot, or within any portion of the Common Areas of any: mobile home, trailer, motor home, tractor, truck (other than pickup trucks), commercial vehicles of any type, camper, motorized camper or trailer, motorized bicycle, motorized go-car, or any other related forms of transportation devices. Notwithstanding of the restrictions herein, temporary parking (not longer than seven (7) consecutive days) is permitted. These restrictions shall not apply to properly licensed and maintained boats and trailers.

## **ARTICLE VI**

### **WIND OVER WAVES HOMEOWNERS ASSOCIATION**

**Section 6.01 Membership.** Every person or entity who is a record owner of a fee simple interest in any Lot which is subject by this Declaration and any Supplementary Declaration to assessment by the Association, including the Declarant and any successor shall be a voting member of the Association. The foregoing is not intended to include persons or entities who sold an interest in a Lot merely as security for the performance of an obligation. Such Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

**Section 6.02 Voting Rights.** The Association shall have two (2) classes of voting memberships:

**Class A.** – With the exception of Declarant (until expiration of the Class B membership as provided below) every person, group, corporation, partnership, trust or other legal entity, or any combination thereof, who is an owner of a lot in Wind Over Waves, shall be a voting member of the Association; provided, however, any such person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who holds such interest solely as security for the performance of an obligation shall not be a Class A Member solely on account of such interest. Ownership of a lot shall entitle each Owner holding the interest required for Class A Membership to cast one (1) vote, provided, however, that if more than one (1) person or entity are the owners of a lot, the vote for such lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association, but, in no event, shall more than one (1) vote be cast with respect to any lot.

**Class B** – The Class B Declarant shall be entitled to two (2) votes for each lot in Wind Over Waves and two (2) votes for each lot that may be annexed to Wind Over Waves. The Class B Membership shall cease and become a nullity on the first

to happen of the following events:

- (i) expiration of the Period of Declarant Control; or
- (ii) when, at its discretion, the Declarant shall relinquish its Class B Membership.

Upon surrender of the Class B Membership, the Declarant may thereafter remain a Class A Member of the Association as to each lot which the Declarant then holds which is required for Class A Membership.

**Section 6.03 Declarant's Right to Representation on the Board of the Association.** During any Period of Declarant Control, Declarant shall have the right to designate and select all of the persons who shall serve as members of the Board of the Association. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Board which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board and to replace such person or persons with another person or other persons to act and serve in the place of any member or members of the Board so removed for the remainder of the unexpired term of any member or members of the Board so removed.

**Section 6.04 Meetings.** A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, a majority of the Board, or by Lot Owners having ten percent (10%) of the votes in the Association. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the Secretary shall cause notice to be hand-delivered or sent prepaid by United States Mail to the last known mailing address of the Owner on the records of the Association. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a director or officer.

**Section 6.05 Quorum.** A quorum shall be deemed present for the purposes of any regular or special meeting of the Association when ten percent (10%) of the Owners are represented either in person or by proxy.

**Section 6.06 Officers.** Officers of the Association charged with the day to day operation of the Association and who shall be authorized to carry out the Association's business and execute documents on behalf of the Association, shall consist of a President and a Secretary/Treasurer, each appointed by the Declarant during the Period of Declarant Control and thereafter elected by a majority vote of the Board.





## ARTICLE VII

### COVENANT FOR PAYMENT OF ASSESSMENTS

#### Section 7.01 Creation of Lien and Personal Obligation for Assessments.

Each Owner, other than the Declarant, of any Lot or Dwelling Unit, by acceptance of a deed therefore, whether or not it shall be so referenced in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to all the covenants, conditions and restrictions of this Declaration and to pay to the Association the following:

- (a) regular annual assessments or charges as herein or in the Bylaws provided;
- (b) special assessments for capital improvements or maintenance; and
- (c) costs and expenses, including reasonable attorney's fees, incurred by the Association incidental to the enforcement of any Rules and Regulations, collection of assessments or collection of damages or charges arising under the Bylaws. The annual and special assessments and any liquidated damages or summary charges as herein or in the Bylaws provided, together with such interest thereon and costs of collection thereof as herein provided, including attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot or Dwelling Unit against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, including attorney's fees, shall also be the personal obligation of the person or persons jointly and severally, who is/are the Owner(s) of such Lot or Dwelling Unit at the time the assessment becomes due.

Section 7.02 Purpose of Assessments. The assessments levied by the Association shall be exclusively to promote the recreation, health, security, safety and welfare of the residents of Wind Over Waves and, in particular, for:

- (a) the improvement, maintenance, and replacement of the Common Areas including, without limitation, any dedicated amenities.
- (b) maintenance of exteriors of Dwelling Units and related improvements on Lots pursuant to Section 4.05 of the Declaration.
- (c) establishment of capital replacement reserves, and
- (d) for the acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of Wind Over Waves, the procurement and maintenance of insurance related to Wind Over Waves, its facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association if necessary, and such other requirements as may be necessary to perform all of the aforesaid functions and purposes.

Section 7.03 Assessment of Uniform Rates for Lots and Dwelling Units. There will be no difference between the amount assessed against Lots and Dwelling Units.

Section 7.04 Determination of Assessment. The initial regular annual assessment for Lots and Dwelling Units is \$400.00 and is based on the present amenities and is subject to be increased in the event of additional amenities being

added to Wind Over Waves . The Board of Directors of Wind Over Waves Homeowners Association shall determine, by majority vote, whether to increase the regular annual assessment and whether to levy a supplemental assessment if it is determined that the regular annual assessment funds collected cannot fund the Board's essential functions.

**Section 7.05 Special Assessments for Capital Improvements.** In addition to the regular annual assessments authorized by Section 7.04 hereof, the Association may levy in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any improvement located upon the Common Area including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose; provided, however, during the Period of Declarant Control, Declarant must also consent to such action. A special assessment shall be fixed at a uniform rate for all lots and may be collected on a monthly, quarterly or semi-annual basis, as determined by members approving of such assessments.

**7.06 Date of Commencement of Annual Assessments; Due Dates.** The regular annual assessments provided for herein shall be paid either quarterly, semiannually, or annually. Payment of such shall be due for each Lot and Dwelling Unit upon the receipt of title of the Lot or Dwelling Unit from Declarant and on each due date thereafter, or, if title is received from a third party, upon the next scheduled due date. The first regular annual assessment shall be pro-rated based on the number of days remaining in the fiscal year. The due date of any special assessment under this Declaration shall be determined by the Board in the resolution authorizing such assessment.

**7.07 Adoption of Budget and Fixing of Annual Assessments; Maximum Annual Assessment.**

(a) At least thirty (30) days in advance of each annual assessment period, the Board shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. Within thirty (30) days of the adoption of any proposed budget, the Board shall provide to all of the Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting the Owners of a majority of the Lots reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

(b) Until June 30, 2002, maximum annual assessments shall be Four Hundred Dollars (\$400.00) per lot. The maximum annual assessment for the fiscal year 2001 and for each fiscal year thereafter shall be established by the Board, may be increased by the Board without approval of the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year.



The maximum annual assessment for the fiscal year beginning July 1, 2002 and each fiscal year there after may be increased without limits by a vote of the Members entitled to cast at least two-thirds (2/3s) of the votes of the Association who are voting, and person or by proxy, at a meeting duly called for this purpose.

(c) The Board may fix the annual assessment in an amount not in excess of the maximum, subject to the provisions of Section 7.07 of this Article.

**Section 7.08 Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate from time to time established by Association not to exceed eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of a mortgage or deed of trust on real estate under power of sale, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

**Section 7.09 Declarant's Obligation for Assessments.** During the Declarant Control Period, the Declarant can either elect to remit assessments on unsold lots or unsold dwelling units or in the alternative, the Declarant can remit, on an annual basis, that sum which equals any deficiency between operating expenses and receipts of the Association exclusive of reserves for the streets up to a maximum of that amount equal to what the Declarant's obligation would be for assessments on unsold lots.

## ARTICLE VIII

### GENERAL PROVISIONS

**Section 8.01 Duration and Amendment.** The covenants and restrictions of this Declaration shall run with the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended as hereinafter provided. This Declaration may be amended with the consent of the Owners entitled to cast at least sixty-seven percent (67%) of the votes of the Association and may be terminated with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of the Association; provided, however, this Declaration may not be amended or terminated without Declarant's consent for so long as Declarant owns any Lot or may annex Additional Property pursuant to the provisions hereinafter set forth, no amendment purporting to revoke or curtail any right herein conferred to Declarant shall be effective unless executed by Declarant. Any amendment must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the amendment on behalf of the Association

that the requisite Owner approval has been obtained and is evidenced by written acknowledgments signed by the Owners approving the amendment and made a part of the Minute Book of the Association; and (3) be properly recorded in the Office of the Register of Deeds of Dare County, North Carolina. For the purpose of this section, additions to existing property by Declarant pursuant to Section 2.02 of this Article shall not constitute an "amendment."

**Section 8.02 Notices.** Any notice required to be sent to Owner, under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing. Notice to any one of the Owners, if title to a Lot is held by more than one, shall constitute notice to all Owners of a Lot.

**Section 8.03 Enforcement.** In the event of any violation or breach of any of the restrictions contained herein by any property owner or agent of such Owner, Declarant, its successors or assigns, or the Owners of Lots within the Subdivision or any of them, jointly or severally, (and any Association that may become incorporated in the future) shall have the right to proceed in law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach of any of the restrictions set out above, but before litigation may be instituted ten (10) days written notice of such violation shall be given to the Owner or his agent. The failure to enforce any right, reservation or condition contained in this Declaration, however, long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction contained in this Declaration shall in no way affect any of the other restrictions, but they and each of them shall remain in full force and affect. In addition, the State of North Carolina as a beneficiary of the obligations set forth in the Lot coverage provisions of Section 4.03 shall have a right to enforce any violation of said Section.

**Section 8.04 Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Architectural Standards Committee will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive.

**Section 8.05 Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.



IN WITNESS WHEREOF, the Declarant has executed this Declaration of Protective Covenants under seal, the day and year below subscribed.

**DECLARANT**

**WIND OVER WAVES, LLC**

By: Billy Roughton (SEAL)  
Billy Roughton, Manager

By: Johnnie Robbins (SEAL)  
Johnnie Robbins, Manager

STATE OF NORTH CAROLINA  
COUNTY OF DARE

I, a Notary Public of the County and state aforesaid, certify that Billy Roughton and Johnnie Robbins, Managers of Wind Over Waves, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument as the act and deed of the Limited Liability Company by authority duly given.

WITNESS my hand and official stamp or seal, this 4<sup>th</sup> day of May 2001.

Ruby G. Thompson  
Notary Public

My commission expires:

7-16-05

**NORTH CAROLINA  
DARE COUNTY**

The foregoing certificate of Ruby G. Thompson  
a Notary Public of Dare Co., NC  
is certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.

Barbara M. Gray, Register of Deeds

By: Vangelia McMurran Assistant Register of Deeds