

BK 571 PG 0359

DECLARATION OF PROTECTIVE COVENANTS AND CONDITIONS

ROBERTS & TRY  
REGISTERED LAND SURVEYORS  
DARE COUNTY, N.C.

KITTY HAWK LAND COMPANY

Ocean View Subdivision, Southern Shores  
Atlantic Township, Dare County, North Carolina

APPLICABILITY

These declarations shall be applicable to Lots 1 through 27, Ocean View Subdivision of Southern Shores as described on the maps and plats prepared for Kitty Hawk Land Company, hereinafter called KHL, by Southern Surveying and Land Planning, William T. Robbins, Registered Land Surveyor; the said maps being duly recorded in the Dare County Registry as follows:

Ocean View Subdivision

Plat Cabinet C, Slide 48C

ARTICLE I: PURPOSES

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

ARTICLE II: RESIDENTIAL AREA COVENANTS

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

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

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

Section 4. Approval of Plans. No building or other structure, site work or clearing preparatory to construction shall be begun, altered, added to, maintained or reconstructed on any lot until the plans and specifications for such work have been reviewed and approved by KHL. Before commencing such review, a lot owner shall submit to KHL three (3) complete sets of plans and specifications including but not limited to: a site plan, a foundation plan, a floor plan or plans, the four directional elevations, and a schedule of proposed exterior colors and materials. No change shall be made from such approved plans and specifications, nor shall subsequent alterations be caused

to the site or building without the express approval of KHL. KHL may approve the plans, siting or specifications conditionally, or it may refuse approval upon any grounds, including purely aesthetic considerations, which in its sole discretion shall appear warranted to protect the beauty and harmony of the Southern Shores development.

If for whatever reason any application for approval shall include any structure proposed to be situated on a piling-type foundation, KHL specifically reserves the right as part of the approval process to set a limit for the amount of exposure above ground allowed for any such pilings, and to required screening and masking of all exposed pilings with solid panels, open lattice or plant materials, or a combination thereof.

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

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

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

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

In addition to the above described setbacks, the following shall apply to Lots 9, 11, 12, 13 and 14. No structure will be approved on those lots within 50 feet of the actual rear lines of the platted lots owned in fee in Block 11A of the "Southern Shores" subdivision (reference Map Book 1, Page 91, Dare County Registry) along Skyline Drive. The existence of rights of exclusive use benefiting and appurtenant to Lots 1, 5, 9, 11, 12 and 14 in Block 11A shall in no way be interpreted to extend the true location of the rear lines of the actual platted lots for purposes of this limitation.

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

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

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

All personal property of the owners, including yard furniture, firewood, bicycles, motor bikes, beach furniture, toys and trash cans, must be stored

or, kept inside each building or in exterior receptacles approved by Declarant. No such items may be kept in the yard areas of the lots, it being the intent of this subsection to maintain an aesthetically pleasing subdivision free of exterior storage and display of unsightly clutter and to insure the continued beauty and neatness of the Property.

Containers for garbage to be picked up by the regular municipal collection service are to be kept at the house and moved out to street-side no sooner than 12 hours prior to collection time and moved back no later than 12 hours after collection unless there is provided by the owner an approved container camouflage facility either underground, or as a feature of the entry area architecture that entirely hides such refuse and containers from the public eye. Such a system for hiding these items from the public eye will require written approval by KHL as part of the original plan review as per Article II, Section 3 above, or as result of submission by owner for such approval subsequently.

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

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

Section 11. Sewage Disposal. Prior to commencing construction of any residence, applicable permits for sewage disposal shall be obtained, with the location of such proposed facility to be approved by KHL as part of the site plan approval process found in Article II, Section 3, above. Governmental approval of such systems shall be obtained after completion, with a copy of approval being forwarded to KHL prior to occupancy of the residence.

Section 12. Attachment to Utilities. No permanent public or private utilities may be connected to any residence until KHL has verified general compliance with these covenants, and with the plans and specifications submitted and approved pursuant to Section 3 of this Article. Such verification is to be in writing.

Section 13. Water Distribution System. If a water distribution system is in operation, or shall come into operation, in any area to which this declaration is applicable, water service to each lot to which the system is available shall be obtained only from the said water distribution system which shall make a reasonable charge for its service. The tap-on to the system shall be approved by KHL in accordance with the provisions of Section 11 of this Article.

If no such system is in operation at the time when approval of plans is obtained pursuant to the terms of Section 3 of this Article, then private wells conforming to all applicable governmental regulations may be constructed on the lots to supply water until tap-on to the water distribution system is possible. In addition, private wells may, with the approval of KHL, be located on the lots to supplement the water distribution system for such purposes as lawn and garden care.

KHL reserves the right to require its approval of the location of all such wells as part of the site plan approval requirement of Section 3 of this Article. KHL's approval shall be contingent on its corequisite approval of the location of the septic tank, grease trap, junction box and nitrification lines on the lot, and, in the interest of community health, KHL reserves the right to require standards more stringent than those required by governmental agencies, based solely on its evaluation of the property as it may relate to other properties. In no way does this reservation of right create any responsibility on behalf of KHL to make such evaluations or approvals.

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

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

Section 16. Mail and Delivery Boxes. KHL shall determine the standards and issue guidelines thereof for the location, material, color and design for all mail and newspaper boxes and manner in which they shall be identified.

Section 17. Pets. No animals of any kind shall be kept, raised or bred on any lot, except a reasonable number of the usual domestic pets such as dogs or cats, provided that such domestic pets are not kept, raised or bred for commercial purposes and provided that they are under the control of their owner at all times.

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

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

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

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

ARTICLE III: COMMON ELEMENTS

To insure that land designated as Common Elements shall exist for the benefit of the property owners, each Southern Shores lot owner shall have an easement to pass over and enjoy the open spaces of the designated Common Elements. The right to use all such Common Elements shall be available to owners of lots shown on the maps and plats to which this declaration is applicable, their families and guests, and to all other Southern Shores residential property owners.

KHL, its successors or assigns, shall retain the right to establish reasonable rules and regulations for the use and enjoyment of all open space or Common Elements.

ARTICLE IV: ANNEXATION OF ADDITIONAL PROPERTIES

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

Section 2. At any time within ten years of the date of this instrument, the Declarant may annex additional properties to the Property herein described. All properties annexed shall be contiguous to the Property herein described and shall be of similar nature.

Section 3. In addition to annexations as provided in Section 2 of this Article, other contiguous property may be annexed at any time.

ARTICLE V: FEES

Recognizing the benefit to be gained from an organization of Southern Shores residents and with the intention of supporting that organization without placing an undue burden on any lot owner affected by this declaration, the following provisions are made:

Section 1. For the purpose of providing maintenance and control of all Common Elements and other common community services of the kind and nature required for general benefit of the property owners of Southern Shores, each and every lot owner, in accepting a deed or contract for any lot in the areas to which this declaration is applicable, agrees to become and shall be a member of the Southern Shores Civic Association, a nonprofit corporation (hereinafter known as SSCA).

Section 2. Each member shall pay an annual membership fee as set by the SSCA, which fee shall be computed by the same method which determines the fee for other lot owners within Southern Shores.

Section 3. The payment of the membership fee shall be dependent upon the following conditions:

(a) If at any time the membership of the SSCA as defined herein shall be composed of less than 60 percent of the lot owners in the entire Southern Shores community, but excluding the owners of lots which are subject to this declaration, then and in that event and from that time, the owners of lots which are subject to this declaration shall not be required to pay annual membership fees to the SSCA. The membership of the SSCA, as considered herein, shall be those lot owners within the Southern Shores community who have paid the said membership fee, and those lot owners who have not made a full payment as required by the By-Laws or regulations of the SSCA shall not be considered members for the purposes of the conditions and statements contained in this Article.

(b) If the membership of the SSCA falls below the minimum level which is set by this Article and at a later date such membership as defined herein rises above such level, the provisions of this Article shall become fully effective from such date.

(c) KHL, at a time to be determined in its sole discretion, may assign all or part of the powers set forth in this declaration to SSCA or to any municipal authority which may be formed to include the properties to which this declaration is applicable. Following such an assignment, there shall be no impairment of any retained rights of KHL nor any limitation of the use or powers which KHL may have in any of the Common Elements as defined herein.

#### ARTICLE VI: GENERAL PROVISIONS

Section 1. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 30 years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

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

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

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

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

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

IN WITNESS WHEREOF, Kitty Hawk Land Company has caused this instrument to be executed pursuant to due authority this 4th day of May, 1988.

KITTY HAWK LAND COMPANY



Charles J. Hayes, Jr.  
Charles J. Hayes, Jr.  
President

ATTEST:

Leslie M. Whitley  
Leslie M. Whitley  
Assistant Secretary

NORTH CAROLINA  
DARE COUNTY

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

WITNESS my hand and official stamp or seal, this 4th day of May, 1988.

Patricia A. Loughry

My commission expires: 10-5-90.



NORTH CAROLINA, DARE COUNTY

The foregoing certificates of Patricia A. Loughry,  
a Notary Public of Dare County, North Carolina

are certified to be correct.

This instrument and this certificate are duly registered in this office in the book and at the page and on the date and at the time shown on the first page hereof.

By: Doris A. Gray Register of Deeds  
Noma Jean Ward Assistant ~~Deputy~~ Register of Deeds