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**NORTH CAROLINA**  
**CARTERET COUNTY**

**MASTER DECLARATION OF**  
**COVENANTS AND RESTRICTIONS**

**SPINNAKER'S REACH**  
**SPINNAKER'S LANDING**

THIS DECLARATION is made this 1 day of MARCH, 1994, by **EMERALD SANDS, INC.**, a North Carolina corporation ("Declarant") of **ROBESON COUNTY**, North Carolina, and **SPINNAKER'S COMMUNITY SERVICES ASSOCIATION, INC.**, a community services association with an architectural control committee having powers as described herein;

WHEREAS, Declarant is the owner of or may acquire a certain tract of land located in Carteret County, North Carolina, (hereinafter referred to as "Development Area") and being more particularly described on Exhibit A:

AND WHEREAS, Declarant is constructing on a portion of the development area a "residential subdivision" which may include open spaces, piers, docks, walkways, trails, streets, and other community facilities for the benefit of the community, with a planned mix of residential housing types, which may include without limitation detached single family homes, patio homes, condominiums and townhouses (hereinafter referred to as "Project");

AND WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values and amenities within said community and to provide for the maintenance of common areas, properties and improvements located thereon, and to this end desires to subject Project property to the covenants, restrictions, easements, charges and liens as are hereinafter set forth, each and all of which are for the benefit of said real property and each present and future owner thereof;

AND WHEREAS, the Declarant also desires to provide and allow for the submission of additional "sections" to the Project as said phases are developed and completed, and to provide for equality of rights,

privileges and obligations of all lot owners in all phases of the Project by adding additional phases by amendment to this Declaration by the recording of an Amendment hereto;

NOW THEREFORE, it is hereby declared that the Project property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth; said property being more particularly described as follows:

BEING all of that property as shown on Exhibit A-1, attached hereto and incorporated herein by reference as if fully set forth.

1. Definitions:

a. "Association" shall mean and refer to SPINNAKER'S COMMUNITY SERVICES ASSOCIATION, INC., a North Carolina non profit corporation, its successors and assigns.

b. "Common Area" shall mean all real property owned by the Association, if any, for the common use and enjoyment of the Owners.

c. "Declarant" shall mean and refer to EMERALD SANDS, INC., a North Carolina corporation, its successors and assigns.

d. "Declaration" shall mean and refer to this instrument, as may from time to time be amended.

e. "Living Unit" or "Unit" shall mean and refer to any portion of a structure situated upon the Properties designed and intended for use and occupancy as a residence by a single family, including without limitation detached single family homes, townhouse homes, patio homes and condominium units.

f. "Property" or "Properties" shall mean and refer to any of the real property which is or may be subject to this Declaration or Supplemental Declaration.

g. "Lot" shall mean and refer to any plot of land or condominium unit as defined in N.C.G.S. 47C-1-103, shown upon any recorded subdivision map of the Properties with the exception of the Common Area, and includes any improvements thereon, if any.

h. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In the event one lot shall have constructed thereon a multifamily dwelling and pursuant to paragraph 10 hereafter the said lot is properly subdivided pursuant to the provisions allowing for such limited subdivision, then the record owner of each dwelling unit shall be deemed a separate "Owner" and "Member" for purposes of this Declaration.

i. "Parcel" shall mean and refer to a portion or part of real property, together with the improvements

located thereon, which becomes subject to this Declaration. This term shall include any additions to the existing Properties as herein provided.

j. "Supplemental Declaration" shall mean and refer to any declaration of covenants, restrictions, easements, charges and liens recorded by the Declarant, or its successors and assigns, which applies to a specific Parcel within the Properties.

k. "Project Property or Area" shall mean the total of the real property incorporated herein and described hereinabove in Exhibit A-1, together with all structures and other improvements thereon, together with such other portions of the Development Area as may from time to time be added to and incorporated in the Project Area by amendment of this Declaration.

l. "Development Area" shall include that property described in Exhibit A, all or part of which may from time to time be submitted to and made subject to the terms of this Declaration.

## 2. Expansion of Properties into Development Area:

The Declarant, for itself and its successors and assigns, hereby expressly reserves the right, but shall in no way be obligated, to expand the properties which are subject to this Declaration without the consent or joinder of the Owners of Lots or persons or entities having a lien or security interest in such Lots by adding from time to time all or any portion of the tract of land known as the Development Area and being more particularly described as follows:

BEING all of that property as shown on Exhibit A, attached hereto and incorporated herein by reference as if fully set forth.

The Declarant may also identify and add to the development area by amendment hereto any other such property as Declarant in its sole discretion may determine.

An amendment to this Declaration shall be made and recorded in the Office of the Register of Deeds of Carteret County, North Carolina, to include each portion of the real property which is to be included within this Declaration, and each such portion of the real property shall constitute an addition to the Properties. The right of the Declarant, or its successors and assigns, to expand the Properties as herein provided shall expire fifteen (15) years from the recording of this instrument or upon the sale of all of the properties described in Exhibit A-1 or Exhibit A.

## 3. Supplemental Declarations:

Declarant shall have the right, from time to time, to record Supplemental Declarations for portions ("Parcels") of the Properties which may designate specific use and other restrictions within said Parcel, may create Common Areas within such Parcel for the use only of Owners of Lots in said Parcel, and may create an internal owners association within said Parcel; provided, however, no Supplemental Declaration shall avoid membership in the Association by Owners of Lots in said Parcel, nor shall any Supplemental Declaration modify or amend the terms of this Declaration or of any prior Supplemental Declaration for another Parcel.

4. Common Areas:

a. Dedication: The Common Areas, if any, in each Parcel shall be dedicated as such by the Declarant, or its successors and assigns, before the first Lot in each Parcel is conveyed to an Owner.

b. Maintenance: The Association shall be responsible for the exclusive management and control of the Common Areas and all improvements located thereon (including recreational facilities, landscaping, fixtures and equipment related thereto), except as otherwise may be provided for in a Supplemental Declaration. This paragraph specifically empowers, but does not limit other powers, the Association to control and regulate the hours and periods of operation of all recreational facilities in the development area, and all maintenance of landscaping in the Development area, even if in areas subject to a Sub-association created by amendment to this Declaration or the recording of a Supplemental Declaration.

c. Owner's Easement of Enjoyment: Section 1. Every owner shall have a 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:

(1) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(2) the right of the Association to limit the number of guests of members;

(3) the right of the Association to suspend the right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(4) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes subject to such conditions as may be agreed to by the Association.

(5) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

Section 2. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. Recreational facilities, if any, situated upon the Properties may be utilized by guests of Owners or tenants subject to the rules and regulations of the Association governing said use and as established by its Board of Directors. Provided, however, that this Section shall not give any owner or guest the right to use any golf course facilities or marina located within the Property, if any shall be constructed.

d. Restriction on Alienation: Notwithstanding anything contained herein to the contrary, the Association shall not alienate in any way or transfer all or any part of the Common Areas without the prior approval of all holders of outstanding first priority mortgages against any of the Properties that are subject to this Declaration; provided, however, this restriction shall not be applicable to grants of easements for utilities, storm

sewer, sanitary sewer, road right of ways and other conveyances for dedication to the public.

5. Association: Membership and Voting Rights:

a. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

b. The Association shall have two classes of voting membership:

Class I: Class I members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event there shall be constructed on any platted lot a duplex or condominium as allowed elsewhere herein, then each such separate dwelling shall be deemed a separate lot for the purposes of this paragraph.

Class II: The Class II member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. For purposes of membership and voting rights under this paragraph, Declarant shall be deemed to own three (3) Lots for each undeveloped acre of land set out in Exhibit A. The Class II membership shall cease and be converted to Class I membership on the happening of either of the following events, whichever occurs earlier:

(1) when the total votes outstanding in Class I membership equals the total votes outstanding in the Class II membership or

(2) on that date which is seven (7) years from the date of the recording of this document.

(3) at the discretion of Declarant.

6. ARCHITECTURAL CONTROL COMMITTEE:

Section 1. **SUBMISSION OF PLANS AND SPECIFICATIONS:** Except for original and initial construction and subsequent modification of improvements by the Declarant on any Lot which such construction is and shall be exempt from the provisions of this provision, no building; wall, fence, landscaping, berm or hedge which act as a fence or privacy inducing structure, pier, dock, ornamentation, or other structure or improvements of any nature shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping have been approved in writing by the Architectural Control Committee.

Each building, wall, fence or other structure or improvements of any nature, together with any ornamentation or landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved.

Any change in the appearance of any building, wall, fence or other structure or improvements and any change in the appearance of the landscaping (excepting the planting of flowers and shrubs indigenous to the area), shall be deemed an alteration requiring approval.

**Section 2. PROCEDURE:** (a) The Architectural Control Committee shall make all efforts to cooperate with the owner or agent in effecting a prompt and reasonable response to any submission. Within 15 days after receipt of all required information, the Architectural Control Committee shall submit in writing to the owner of the lot a response stating whether or not the requested improvements are approved. Unless a response is given by the Architectural Control Committee within 15 days, the plan shall be deemed approved. The Architectural Control Committee shall have the power to promulgate reasonable rules and regulations designed to carry out the provisions and intent of this paragraph. Any such rules and regulations shall be approved by the Board of Directors prior to implementation.

(b) Action of the Architectural Control Committee may be based upon any reasonable ground, including aesthetic grounds. Requirements of any governmental authority shall not be considered by the Committee. If response of the Architectural Control Committee must be:

1. An approval; or
2. An approval with conditions; or
3. An approval with conditions together with a request for additional information; or
4. A denial.

A denial is an extreme response and not to be made unless an approval with conditions can not be made. A denial prohibits or delays construction of the proposed improvements.

A request for additional information shall be made only with a conditional approval and will not delay construction unless the information requested involves a matter which will need to be approved prior to construction. A request for additional information shall not be used by the Committee to enlarge the required response time. If an approval with conditions is granted and thereafter construction begins, the construction shall be deemed approved by the owner of the lot of the conditions imposed.

(c) The Architectural Control Committee may not deny the submission unless it finds at least one of the following findings:

(1) That the improvements sought to be constructed will have a negative economic impact on any other lot within the subdivision.

(2) That a required specific buildings standard or other condition contained within the Restrictive Covenant documents have not been met.

(3) That the improvements are architecturally incompatible with proposed or constructed improvements on other lots within the subdivision.

(4) That the natural features of the lot will be disturbed to an extent more than reasonably necessary to construct the proposed improvements.

In addition to the above required finding, in order to deny a submission, the Architectural Control Committee must provide a specific and detailed response of why an approval with conditions was not a reasonable alternative to the denial.

**Section 3. EXCEPTIONS:** The paint, coating, stain and other exterior finishing colors and roof shingles/exterior on all buildings may be maintained as that originally installed, without prior approval of the Architectural Control Committee, but prior approval by the Architectural Control Committee shall be necessary before any such exterior color is changed.

**Section 4. COMMITTEE MEMBERSHIP:** Until such time as the sale of the last numbered lot in the subject property is evidenced by the recordation of a deed therefore, all rights, privilege, powers and authority granted herein to the initial Architectural Control Committee, to whom the specific power to act hereunder is expressly conveyed, shall be exercised by the Declarant, its successors or assigns. The Declarant may assign its

powers hereunder to an Architectural Control Committee, but so long as Class II membership shall exist, the Declarant shall appoint a majority of the Architectural Board. Thereafter, all representatives shall be appointed by the Board of Directors of the Association. Except as set out above, the Architectural Control Committee shall be composed of three (3) owners appointed by the Board and shall serve at the pleasure of the Board.

**Section 5. COMMITTEE PROCEDURE:** A majority of the Architectural Control Committee may take any action said Committee is empowered to take, may designate a representative to act for the Architectural Control Committee, and, with approval of the Association Board, may employ personnel and consultants to act for it. In the event of death, disability or resignation of any member of the Architectural Control Committee, the Association shall designate a successor. The members of the Architectural Control Committee shall not be entitled to any compensation for services performed pursuant to this covenant. The Association may establish a fee to cover the expense of reviewing plans and related data at the time plans are submitted for review in order to compensate any consulting architects, landscape architects, urban designers or attorneys.

**Section 6. APPEAL OF COMMITTEE ACTION:** Any Owner may appeal the decision of the Architectural Committee provided that all parties involved comply with the decision of the Architectural Committee until such time, if any, as the Board of Directors amends, or reverses the Architectural Committee's decision. Appeals petitions must be legibly written, state the grounds for appeal and be submitted to the Board of Directors within 30 days of the decision of the Architectural Committee. The Board of Directors shall act upon the appeal by amending, reversing or confirming the decision of the Architectural Committee within 15 days of receipt of the petition. The Board of Directors' decision shall be by majority vote. Any owner must exhaust this avenue of appeal prior to resorting to a court of law or equity for relief.

**Section 6. NOTICE:** Any Owner shall be deemed to have made a submission on the date it is hand delivered or deposited in the US Mail, registered or certified mail, return receipt requested, to the address shown on Exhibit B. Any change in address shall be evidenced by a Notice in a form substantially similar to Exhibit B which shall contain at a minimum the information shown thereon and which shall be filed with the Register of Deeds in the county in which the property is located. The Association shall at all times provide a place in the county in which the property is located at which the submission may be hand delivered. Said Notice shall be indexed in the name of the Association. ARCH-WA.PAR(030294)

## **7. Assessments:**

### **Section 1. Purpose of Assessments:**

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the owners in the Properties and for capital improvements and maintenance of the Common Area and any improvements thereon.

**Section 2. Creation of the Lien and Personal Obligations of Assessment:** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed, therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments or charges;

(2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided;

(3) to the appropriate governmental taxing authority, a pro rata share of ad valorem taxes levied against the Common Area if the Association shall default in the payment therefor for a period of six (6) months, all as hereinafter provided.

The annual and special assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorneys' fees (as provided in North Carolina General Statutes Section 6-21.2) incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the Owner at the time when the assessment became due. The obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title.

Section 3. Minimum Annual Assessment: The initial annual assessment on a completed structure shall be \$ 240 and shall be \$120 for a lot upon which construction is not complete, as provided below. Assessments shall commence beginning the first day of the month following conveyance of the Common Area to the Homeowner's Association. There shall be no assessment against any lot owner until such time as the paving, water and electrical services are extended to each lot. So long as there exists Class II membership, the Declarant shall pay no dues or assessments but in lieu thereof the Declarant covenants and agrees to defray such deficit as may be required for maintenance up to the amount of the current operating budget. Thereafter, Declarant shall pay assessments in the amount of twenty-five percent (25%) of the normal assessment on lots owned by Declarant.

The owner of each Lot upon which there has been completed a structure shall be obligated to pay the full amount of the assessment. For the purposes of this paragraph, "completed" structures shall mean a structure which has actually tapped into any water or wastewater treatment system or has had provided to it either such service by private means. The owner of a Lot upon which construction is not complete shall pay only one-half (1/2) the annual assessment but be fully obligated to pay in full any other assessments or taxes levied against the Lot. The determination of "completion" shall be made by the Association on the first day of January and the first day of July of each year and shall be binding for the remainder of the six (6) month period as to that Lot.

Section 4. Collection of Assessments: (a) The first pro rata payment of the balance of the current year assessment shall be due and payable beginning the first day of the month following conveyance of the common area to the Homeowner's Association. In addition thereto, at closing, the Declarant shall cause to be collected from the purchaser, an amount equal to two-twelfths of the then current minimum annual assessment for said lot and an amount equal to the Purchaser's pro rata share of the next due annual insurance premium payable by the Association. This shall be used for the sole purpose and use as a working capital fund. The Board of Directors shall fix the amount of the assessment against each lot at least thirty days in advance of the annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors of the Association and the Board of Directors shall have the authority to require the assessment to be paid in pro-rata monthly installments, quarterly and semi-annually as well as annually. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified lot have been paid.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum assessment may be increased each year not more than fifteen (15%) percent above the maximum assessment for the previous year without a vote of the membership. Except, however, increases attributable solely to the addition of new amenities, new Common Areas or police and security purposes, shall not be subject to this limitation.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 15% by a vote of two-thirds (2/3) of members of each class who are voting in person or by proxy, at a meeting duly called for this purpose. Except, however, increases attributable solely to the annexation of new areas, including new Common Areas, shall not be subject to this limitation.

(d) If an additional property owner's association(s) is established on any property which is or may become subject to this declaration by a supplemental declaration hereto, then, notwithstanding anything contained therein to the contrary, all assessments made by and for any such association shall be paid to the Spinnakers Community Services Association, Inc., for bookkeeping and record keeping purposes, and shall then be transferred as necessary to the appropriate association. The Spinnakers Community Services Association, Inc. may charge a reasonable fee for its record keeping services and deduct same from assessments collected.

**Section 5. Special Assessments for Capital Improvements:** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members of each class who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 6. Remedies for Non-Payment of Assessments:** Any assessment which are not paid when due shall be delinquent. The assessment shall bear interest from the due date at the rate established by the Board of Directors of the Association, or if not set by the Board, at the highest rate allowed by law, together with such late fees as may be set by the Board. The Association shall file a lien of record against any lot where there remains an assessment unpaid for a period of 30 days or longer. Said lien shall be filed in the office of the clerk of superior court of Onslow County in a manner provided therefor by Article 8 of Chapter 44 of the North Carolina General Statutes. No Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the Common Area or abandonment of his dwelling unit or site.

The Association may bring an action at law against the Owner personally obligated to pay any assessments and interest. Costs and reasonable attorneys' fees for the prosecution of any such action shall be added to the amount of such assessment. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then, and in that event, the Association shall collect on such judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

The association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Chapter 45 of the North Carolina General Statutes. All fees, charges, late charges, fines, and interest are enforceable as assessments.

In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and owner of the obligation secured by this Declaration.

The Registered Agent of the Association shall be the Trustee for all purposes of the foreclosure proceeding and the Association shall have the power to appoint a substitute trustee if for any reason the Association desires to replace the trustee, and the said substitute trustee shall succeed to all rights, powers and duties thereof. The Association shall request of the trustee to sell the land subject to the lien at public action for cash, after having first given such notice and advertising the time and place of such sale in such manner as may then be provided by law for mortgages and deeds of trust, and upon such and resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey to the purchaser in as full and ample manner as authorized by Chapter 45. The Trustee shall be authorized to retain an attorney to represent him in such proceedings. The proceeds of the Sale shall, after the Trustee retains his commission, together with any addition attorney's fees incurred by the Trustee, be applied to the costs of the sale, including but no limited to costs of collection, taxes, assessment, costs of recording, service fees, and incidental expenditures, the amount due on any note secured by the property, and any advancements made by the Association in the protection of the security.(060193)

**Section 7. Subordination of the Lien to Mortgages:** The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### 8. General Restrictions:

**Section 1. Residential Use:** As to that property designated as "Project Property or Area" and set out in Exhibit A-1, no structure shall be erected, altered, placed or permitted to remain on any Lot other than a single family (a single living unit) or multi-family dwelling (two-family or more residence with a separate living unit for each family), not to exceed three stories in height, (which may include separate living quarters for one or more members of the owners' family or relative), a private attached garage which may contain living quarters for occupancy by domestic servants of the lot occupant only, provided that the same are constructed in line with general architectural design and construction standards used as the dwelling itself. Each living unit shall contain a minimum of 1400 heated square feet, and if two-story, the first floor shall contain a minimum of 900 square feet.

This covenant shall not be construed as prohibiting the use of a new dwelling as a model home for sales/rental purposes. Notwithstanding the above, any additions to the Project property in the Development Area may be used for other such purposes as may be set out and/or limited in a Supplemental Declaration.

**b. Prohibited Structure:** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporary or permanently. No trailer, mobile home, camper or like vehicle shall be allowed on the property at any time, or any other structure which is finished or partially finished at a manufacturing unit or plant and transported for quick assembly or which is designed to be disassembled and relocated shall be allowed. It is specifically the intention and purpose of this covenant to prohibit the location of mobile homes, trailers, modular houses, relocatable houses, or similar type structures on the property. This covenant shall not be construed as prohibiting the use of such a structure as a sales/rental model or office or construction site facility.

c. **Nuisances:** No noxious, offensive, or illegal activity shall be carried on or conducted upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted to remain on a Lot. No automobile, other vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands except in an enclosed garage. Declarant, or Association, its successors or assigns, reserves the right to enter upon and cut grass, weeds, or undergrowth on any lot or easement, but shall be under no obligation to do so. The Declarant or Association may contract for, and assess to owner, any maintenance necessary to enforce his covenant.

d. **Animals:** No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that household pets may be kept provided that said pet shall not be kept for breeding or commercial purposes. Any such household pet shall not be allowed off the Lot of the Owner of said pet unless said pet is attended and on a leash. Owners shall be solely and absolutely liable for the acts of any pet kept on their Lot.

e. **Garbage and Refuse Disposal:** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be burned or disposed of on any Lot and shall be kept except in sanitary containers approved by the Architectural Committee. All equipment for the storage prior to disposal of such material shall be kept in a clean and sanitary condition. The placement of containers shall be approved by the Architectural Committee and, in any event, shall be kept in an enclosed area not subject to view from any person, from any direction. The Declarant and Association reserves the right for itself, its successors and assigns, to contract for garbage collection services for each lot in the subdivision and the lot owner shall be responsible for the payment of such garbage services to the company providing the same, or the Association may make such a common expense or expense to a particular owner.

f. **Exterior Lights:** All light bulbs or other lights installed in any fixture located on the exterior of any dwelling, building or other structure located on any Lot shall be clear or white lights or bulbs. No mercury vapor or similar wide area lighting similar to street lights shall be allowed without prior Architectural Committee approval.

g. **Sight Distance at Intersections:** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

h. **Mailboxes:** Mailboxes shall be maintained by the Association at a one or more central locations determined by the Declarant or Association. In the event individual mailboxes shall be allowed by the US Postal Service, then an individual mailbox will be maintained by each lot owner. All mailboxes shall retain the same style, design, color and location of the mailbox as originally provided at construction of any residence. The Architectural Committee reserves the right to approve the style, design, color and location prior to any original installation or replacement. Application shall be made to the Architectural Committee prior to installation or

replacement. By accepting a deed to any subject property, owner gives the Architectural Committee the right to remove any nonapproved mailbox in a reasonable manner; all costs for same shall be paid by owner, and all damages against the Architectural Committee are waived. (022794)

i. Signs: No sign, billboard, or other advertising of any kind, including without limitation "professionally prepared "for sale" and "for rent" signs, shall be placed or erected on any Lot, right of way or Common Area save and except a professionally prepared "for sale" or "for rent" sign not to exceed four (4) square feet in size. Although approval by the Architectural Committee is not required prior to the display of such signs, the Architectural Committee may itself remove, have removed, or require the removal of any such sign which in its opinion would not otherwise be allowed under paragraph 6 of this Declaration. A valid easement shall exist on any Lot for such removal by the Architectural Committee or its agents. Provided, however, nothing shall prohibit or limit in any manner "construction" signs designating the job site and builder which may be placed upon a Lot during the period of the construction of a residential dwelling on the Lot but must be immediately removed upon final completion of such construction. Notwithstanding the above, any additions to the Project Property in the Development area may be further limited in regard to signs, billboards or advertising as set out in any Supplemental Declaration. Nothing herein shall prohibit any sign erected by the Declarant or its assigns. (022794)

j. Antennas: There shall be no exterior antennas of any kind for receiving and/or sending of T.V., radio or other signals unless same have first been approved by the Architectural Committee. In any event, it shall not be viewable from any other Lot.

k. Driveways/Parking: All driveways constructed on any Lot shall be either approved gravel or concrete or such other surface which must be approved by the Architectural Control Committee. The use or construction of a headwall or other ornamental structure, gravel, rock or other material at or around the driveway culvert shall be prohibited. The earthwork extending from the driveway to each end of the culvert shall be gently sloped and sodded, as approved in each case. An Owner shall provide a minimum of two (2) paved off-street parking spaces, excluding garage space(s) and shall provide at least one per automobile or other vehicle owned and regularly used at the Lot. On street parking is prohibited except for temporary, short gatherings. (022794)

l. Vehicles, Boats, Storage, Travel Trailers, etc.: No vehicle without current inspection sticker, vehicle over 5000 pounds empty weight, camper trailer, motor homes or bus shall be parked overnight on any lot except in an enclosed garage; provided, however, guests of an owner may so park such vehicle for a period not to exceed seven (7) days each calendar year. A pleasure boat on its trailer may be parked and raw firewood, bicycles, motorcycles, or other items may be stored only on that part of any lot away from the street lying beyond the front line of the house so that it is not viewable from any street or, if the size and approved location of the improvements prohibits said location, then such items may be stored or located at a place on the lot as designated by the Architectural Control Committee. No automobile, other vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands except in an enclosed garage.

m. Shingles: All roofs shall be covered with cedar shake, or if an asphalt or fiberglass based shingle shall be used, it shall be a "dimensional" shingle in appearance and shall be approved by the Architectural Control Committee. (022794)

n. Trees: Except as to development or construction by Declarant, or as may be approved by the Architectural Committee, no tree four (4") inches in diameter at any location on said tree or ten (10') feet in height shall be cut, removed or intentionally damaged on any Lot unless first approved by Architectural Committee.

o. Swimming pools: Outdoor swimming pools, hot tubs, jacuzzis, and other similar facilities may be located on a lot only after the Architectural Committee approval, and shall be screened and fenced. All such

improvements shall be subject to approval of and compliance with all governmental laws and regulations.

p. Clotheslines: Clotheslines shall be prohibited. (022794)

q. Fence Minimum Requirements: Architectural review requirements must be met prior to construction of any fence. No fence shall be erected between any building and the street right of way. Any portion of any fence which can be viewed from the street right of way shall be of an ornamental nature. Brick and split-rail fences shall be deemed to meet the requirements of this restriction. The term fence shall include but not be limited to, a wall, fence, landscaping, berm, or hedge which act as a fence or privacy or security inducing structure. (022794)

#### 8.1 Special Restrictions Affecting Lots Near Water or Marshlands:

a. Restricted Zone Established. In order to preserve the natural beauty of the Property and to provide a "cover" for animals which habitually move along the marsh edges, there is hereby established a construction and clearing restricted zone on all Lots fronting on water, marsh, pond or wetlands. That portion of any Lot which is a marsh, pond or wetland and that portion of any lot which is located within twenty (20) feet of the average high water mark shall be preserved substantially in its present natural state except for moderate clearing for view and breeze. Construction of improvements and major clearing of trees and underbrush is hereby restricted. This paragraph shall apply to any Lot fronting on the marsh, river, creek, pond or wetlands. Notwithstanding the foregoing, the Developer hereby reserves the right to exempt Lots or portions of Lots or tracts from said construction and clearing restrictions in those cases where it, in its uncontrolled discretion, determines that such exemption will not materially lessen the natural appearance and beauty of the Property or is determined to be necessary to protect the shoreline from erosion.

There is hereby reserved an easement for wetlands and pond maintenance, construction and reconstruction, including those areas designated as Section 404 wetlands and extending into each lot ten (10) feet on either side of a line which is parallel to the Section 404 wetlands boundary as determined by the US Army Corps of Engineers, and also extending 10 feet on either side of all boundary lines between all lots. Said easement may also be used for the purpose of installing, maintaining and repairing aeration facilities and any utility and service lines and systems associated therewith, but all such construction, repair and replacement shall be in accordance with all laws and regulations of the State of North Carolina. (030894)

b. Conditions of Limited Dock Construction. These provisions shall not prohibit the construction of docks and decks. All dock permits must first receive approval from the Architectural Committee prior to any required submission to any governmental authority. However, in order to avoid an unsightly proliferation of docks, the general rule is established that Owners of Lots fronting on those water bodies may erect docks within the Property with permission for such construction being first obtained from the Architectural Committee which approval may be not denied so long as the construction shall be conditioned upon compliance with the following requirements:

(1) Complete plans and specifications include site, materials, color and finish must be submitted to the Architectural Committee in writing;

(2) Written approval of the Architectural Committee to such plans and specifications must be secured, the Architectural Committee reserving the right in its uncontrolled discretion to disapprove such plans and specifications on any grounds, including purely aesthetic reasons;

(3) Written approval of any local, state or federal governmental departments or agencies which have jurisdiction over construction in or near marshlands or wetlands must be secured.

Any alterations of the plans and specifications or of the completed structure must also be submitted to the Architectural Committee in writing and the Architectural Committee's approval in writing must be similarly secured prior to construction, the Architectural Committee reserving the same rights to disapprove alterations as it retains for disapproving the original structures.

Dock permits shall include such easements over common areas as may be required by the dock construction permit. The cost of locating such easement shall be borne by the requesting owner.

c. Maintenance of Dock. All Owners who obtain permission and construct docks, must maintain said structures in good repair and keep the same safe, clean and orderly in appearance at all times, and further agree to paint or otherwise treat with preservatives all wood or metal located above the high water mark, exclusive of pilings and to maintain such paint or preservatives in an attractive manner. The Architectural Committee shall be the judge as to whether the docks and/or boathouses are safe, clean, orderly in appearance and properly painted or preserved in accordance with reasonable standards; and, where the Architectural Committee notifies the particular Owner in writing that said dock and/or boathouse fails to meet acceptable standards, said Owner shall thereupon remedy such condition within thirty (30) days to the satisfaction of the Architectural Committee, and that failing to so remedy such condition, the Owners hereby covenant and agree that the Association, upon the recommendation of the Architectural Committee, may make the necessary repairs, but is not obligated to make such repairs or take such actions as will bring the said dock and/or boathouse up to acceptable standards, all such repairs and actions to be at the expense, solely, of the Owner in question.

d. Reservation of easement for Common Area Docks. An easement is hereby reserved located within that twenty (20) foot easement along the dividing line between Lots 4 and 5 OF SPINNAKERS LANDING as described on Exhibit A-1 (each lot being subject to a 10 foot portion of the total 20 foot wide easement). Said easement shall be for the purpose of installing, maintaining and repairing the dock and walkway and any utility and service lines and systems associated therewith, but all such construction, repair and replacement shall be in accordance with all laws and regulations of the State of North Carolina. It is specifically understood that the width of the dock and walkway which is to be constructed or has been constructed and may be maintained is less than the easement width and that the remaining easement width shall specifically be for the maintenance and/or reconstruction thereof.

If said dock has not been fully constructed at the time the title to one or more lots have been conveyed by Declarant, the Declarant hereby reserves a temporary construction easement twenty five(25) feet on either side of the boundary line which divides Lots 4 and 5 of SPINNAKERS LANDING as described on Exhibit A-1, subject to this Declaration. Such easement shall be limited for the purposes above stated and shall expire eighteen (18) months from the recording hereof.

e) Encroachment. In the event any portion of the common dock and walkway which is presently built encroaches upon the adjacent lot, then and in that event an easement for that encroachment shall and does hereby exist, including an easement which shall affect any riparian and littoral rights.

f) Maintenance of Dock and Walkway. Each owner shall maintain all structures in good repair and keep the same safe, clean and orderly in appearance at all times, and further agree to paint or otherwise treat with preservatives all wood or metal located above the highwater mark, exclusive of pilings, and to maintain such paint or preservatives in an attractive manner. General rules of law regarding liability for property damage due to negligence or willful acts and omissions shall apply. The cost of reasonable repair and maintenance shall be shared by each owner and shall be agreed upon in advance by each owner.

g) Entry Not Trespass. Whenever an owner is permitted by these covenants to correct, repair, clean,

preserve, clear out or do any action in or upon the easement areas, such action shall not be deemed a trespass.

h) Destruction By Fire or Other Casualty. If any structure is damaged or destroyed by fire or other casualty, any owner may restore it, and if the other owner thereafter makes use of the structure, the other owner shall contribute to the costs of restoration thereof in equal proportion, without prejudice, however, to the right of any such owner to call for contribution by others under any rule of law regarding liability for negligence or willful acts or omissions.

i) Right To Contribution Runs With Land. The right of any owner to contribution from any other owner under this paragraph shall be appurtenant to the land and shall pass to the owners successors in title.

j) Arbitration. In the event of any dispute arising concerning a common dock or structure, or under the provisions of this Declaration, each party shall chose one arbitrator, and the decision shall be by majority vote of all the arbitrators. The arbitrator shall chose another arbitrator to break any tie or deadlock.

k. Entry not Trespass. Whenever the Architectural Committee is permitted by these Covenants to correct, repair, clean, preserve, clear out or do any action on the property of any Owner, or on the easement areas adjacent thereto entering the property and taking such action shall not be deemed a trespass by the Association or its agents.

9. Street Lighting Agreement: The Declarant and Association reserves the right to subject the real property to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lighting, either or both which may require an initial payment and/or a continuing monthly payment to an electric utility company or Association by the owner of Lot.

10. Limited Rights on Further Subdivision:

No Lot which has been designated as such by Declarant by either recorded plat or by Supplemental Declaration shall be further subdivided or separated into smaller Lots, without the prior written consent of the Association. This restriction shall not apply, however, to Declarant. Notwithstanding the above, however, Lots 1 and 2 may be further subdivided to create a third lot from a portion of each of said lot 1 and 2. Further, notwithstanding the above, any one lot may be divided into two separate lots for the construction and conveyance of each side of a single building which will constitute a duplex. And further, nothing shall prohibit the recording of a Declaration of Condominium under Chapter 47C of the North Carolina General Statutes which declaration shall provide for the conveyance of a maximum of two condominium units on a single lot. (030894)

11. Easements:

a. Utility Easements: There is hereby reserved by the Declarant, its successors and assigns, the utility easements as shown on the recorded plats of the Parcels or included within the Supplemental Declarations pertaining to the Parcels. Said easements may be used for the purpose of installing, maintaining, repairing and replacing all utility service lines and systems including, but in no way limited to, those for water, sewer, gas, telephone, electricity and cable television.

b. Easement to Correct Drainage: For a period of two (2) years from the date of conveyance of the first Lot in a Parcel, the Declarant reserves a blanket easement and right of way on, over and under the ground within a Parcel to maintain and correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary. Following such action the Declarant shall restore the affected property to its original condition as near as practical. The Declarant shall give

reasonable notice of its intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice. At the expiration of such two year period, said easement to correct drainage shall automatically be held by the Association.

c. Encroachments: In the event any portion of a Common Area encroaches upon any Living Unit or any Living Unit encroaches on a Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for the encroachment and for the maintenance of same shall exist so long as the encroachment exists.

d. Association Maintenance: The Board of Directors of the Association and the Architectural Board, acting through the Association, its officers, agents, servants and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably be necessary for maintenance.

e. Common Areas: Easements are also reserved over those portions of the Common Areas, if any, that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the common area or the air and light space above such common area.

f. Grant to Others: The Declarant or Association may grant permits, licenses, and easements over any common area or utility easement reserved elsewhere for utilities, roads or other purposes reasonably necessary or useful for the Project maintenance or operation of the Project.

## 12. Variances:

The Association may allow reasonable variances and adjustments of the restrictions set forth in this Declaration in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that any such variance granted must be done in conformity with the intent and purposes of the general development scheme and provided also that in every instance such variance or adjustment shall not materially be detrimental or injurious to other property or improvements within the Properties.

## 13. Remedies:

In the event of a violation or breach of any of these restrictions, covenants, agreements and conditions by any person or concern claiming by, through or under the undersigned, or by virtue of any judicial proceedings, the Association, its successors and assigns and the owners of the number lots in the subdivision, or any of them, jointly or severally, shall behave the right to proceed at law or in equity to compel compliance with the terms thereof or to prevent the violation or breach of any of them. Costs and reasonable attorney fees shall be recoverable by the Association as part of any judgment or order to enforce these Restrictive Covenants. The failure to enforce any right, reservation, restriction or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

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13.1 Remedies Extended to Governmental Bodies: To ensure that this subdivision is maintained consistent with the laws of the State of North Carolina, Carteret County and the City of Emerald Isle, the State of North Carolina, Carteret County, and the City of Emerald Isle, and any regulatory body or office thereof is specifically empowered to take such acts necessary by and through its officers to enforce any of these covenants against an owner or the Association.

14. Rights of Mortgagees: (a) Notice of action: A holder or insurer of a mortgage, upon written request to the Association (such request to state the name and address of such holder or insurer and the description of secured properties) will be entitled to timely written notice of:

1. Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

2. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot upon which it holds a mortgage.

3. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

4. Any proposed amendment to the project instruments effecting a change in the boundaries of any Lot, ownership of Common Elements, if any, the number of votes in the Association pertaining to any Lot or any proposed change in the restrictions on the properties.

15. Insurance: Section 1: The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have at least a One Million and no/100 (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Three Million and no/100 (\$3,000,000.00) Dollar limit per occurrence, and a Five Hundred Thousand and no/100 (\$500,000.00) Dollar minimum property damage limit.

Premiums for all insurance on the Common Area shall be common expenses of the Association. This policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

Cost of insurance coverage obtained by the Association for the Common Area shall be included in the regular assessment.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in North Carolina which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area shall be for the benefit of Owners and their Mortgagees as their interests may appear.

(c) Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors' provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the area.

(f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair, and reconstruct, instead of paying cash;

(iii) that no policy may be canceled, invalidated or suspended on account of anyone or more individual Owner;

(iv) that no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect maybe cured by the Association, its manager, any Owner, or mortgagee.

(v) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment but may not be less than three (3) months' assessments, plus reserves on hand reviewed and adjusted annually, with minimum of \$25,000.00. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

The Association shall purchase officers and directors liability insurance, and every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement of indemnification hereunder based upon

a settlement by the Director or Officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

**Section 2. Individual Insurance.** By virtue of taking title to a Lot subject to the terms of this Declaration, each owner covenants and agrees with all other Owners and with the Association that each Owner shall carry a homeowners or fire insurance policy which shall include public liability and blanket all-risk casualty insurance on his Lot(s) and structures constructed thereon. Owner shall provide a copy of the Declaration page of the policy to Association at such time(s) as the Association may direct. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed, Owner shall elect whether to rebuild within sixty (60) days of the loss. If Owner determines not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris within ninety (90) days of loss and return it to substantially the natural state in which it existed prior to the beginning of construction. If Owner fails to so clear the Lot within ninety (90) days of the loss, the Declarant or Association may do so and the cost shall be assessed against the Owner of the Lot.

**Section 3. Disbursement of Proceeds.** Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interest may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

(b) If it is determined, as provided for in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Section 3(a) above.

**Section 4. Damage and Destruction.**

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the total vote of the Association whose common property is damaged, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available,

provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the Common Area damaged or destroyed shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to its natural state and maintained by the Association in a neat and attractive condition.

**Section 5. Repair and Reconstruction.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of each class, levy a special assessment against all Owners in proportion to the number of Lots owned, provided, if the damage or destruction involves a Lot or Lots only Owners of the affected Lots shall be subject to such assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

16. Amendment:

(a) These restrictions are subject to being altered, modified, canceled or changed at any time as to said subdivision as a whole or as to any subdivided lot or part thereof during the first twenty (20) year period by written document executed by the Declarant or their successors in title and by the owner of not less than ninety percent (90%) of the subdivided lots or parts of said subdivision to which these restrictions apply, and recorded in the office of the Register of Deeds of the County in which this Declaration is recorded. After the expiration of the initial twenty (20) year period, these restrictions are subject to being altered, modified, canceled or changed at any time as to said subdivision as a whole or as to any subdivided lot or part thereof by written document executed by not less than seventy-five percent (75%) of the Lot Owners, and recorded in the office of the Register of Deeds of the County in which this Declaration is recorded.

(b) Notwithstanding the above, Declarant may amend this Declaration in accordance with Paragraph 3 above to add additional property to this Declaration.

(c) 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 by, guaranteed by, sponsored by or insured by a governmental or quasi-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 the 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 (VA), U. S. Department of Housing and Urban Development (HUD), the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, requiring an amendment as a condition of approval, or suggesting an amendment, shall be sufficient evidence of the approval of such amendment of VA, HUD and/or such corporation or agency and permit Declarant to amend to accord with such letter. No amendment made pursuant to this Section shall be effective until duly recorded in the Office of the Register of Deeds.

17. Declarant's Rights:

Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the county in which this Declaration is recorded. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit A in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, successors and assigns, may be reasonably required, convenient, or incidental to the sale, re-sale, or rental of such Lots, including, but not limited to, business offices, signs, model units, and sales/rental offices. The Declarant shall have an easement for access to such facilities and activities shall include specifically the right to use residences owned by the Declarant, if any, and any which may be owned by the Association.

The Declarant shall have the rights (i) to use or grant the use of a portion of the Common Area for the purpose of aiding in the sale, or rental, or management of Lots; (ii) to use portions of the Property for parking for prospective purchasers or lessees of Lots and such other parties as the Declarant determines; (iii) to erect and display signs, billboards and placards and store and keep the same on the property; (iv) to distribute audio and visual promotional material upon the Common Area; and (v) to use or permit to be used any Lot which it owns or leases as a sales and/or rental office, management office or laundry and maintenance facility.

So long as Declarant continues to have rights under this paragraph, no person or entity shall record any declaration of restrictions and protective covenants or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of restrictions and protective covenants or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This provision may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this provision shall terminate upon the earlier of (a) fifteen (15) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

#### 18. General Provisions:

1. Duration: The covenants and restrictions set forth herein shall run with and bind the Properties for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive ten (10) year periods unless otherwise terminated by a vote of seventy-five percent (75%) of the then record Owners of all Lots within the Properties.

2. Severability: Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

3. Captions: The captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration.

4. Construction: Whenever the context so requires, the use herein of any gender shall be deemed to include the plural and the plural shall include the singular.

5. **Litigation:** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of the Board of Directors and seventy-five (75%) percent of the membership. This Section shall not apply, however to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of personal assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage votes and pursuant to the same procedures necessary to institute proceedings as provided above. (022794)

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, or if corporate, have caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, this the day and year first above written.

EMERALD SANDS, INC.

By: \_\_\_\_\_  
PRESIDENT

(CORPORATE SEAL)  
ATTEST:

\_\_\_\_\_  
Secretary

NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, a Notary Public of the County State aforesaid, certify that \_\_\_\_\_, personally came before me this day acknowledged that he/she is \_\_\_ Secretary of EMERALD SANDS, INC, a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_ President, sealed with its corporate seal and attested by him/her as its \_\_\_ Secretary.

Witness my hand and official stamp or seal, this \_\_\_ day of FEBRUARY, 1994.

\_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_.

EXHIBIT A  
DECLARATION OF RESTRICTIVE COVENANTS  
EMERALD SANDS, INC.  
(DEVELOPMENT AREA)

BEING ALL OF THAT PROPERTY SET OUT IN THAT DEED RECORDED IN BOOK 716, PAGE 207, CARTERET COUNTY REGISTRY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

On Bogue Banks in the Town of Emerald Isle, Carteret County, North Carolina, and being all of Section No. 370, as shown and designated on the map prepared by William Ragsdale, Jr., Registered Civil Engineer, dated March 26, 1954, and recorded in Book of Maps 3, page 35, Register of Deeds, Carteret County, and being a portion of the lands described in and conveyed by deed from Anita Fort Maulick to James A. Singleton, Jr., dated March 30, 1954, and recorded in Book 154, page 184, Carteret County Registry.

DECLARATIONS OF RESTRICTIVE COVENANTS  
EMERALD SANDS, INC.  
EXHIBIT A-1  
SPINNAKER'S LANDING  
(SOUND SIDE)  
(PROJECT AREA)

Being all of those lots as shown on that Plat entitled "SPINNAKERSLANDING" and recorded in Map Book \_\_, Page \_\_, Carteret County Registry.

EXHIBIT B

**Index in the Grantor Index:**

**Spinnaker's Reach Subdivision**  
**Spinnaker's Landing Subdivision**  
**Emerald Sands, Inc.**  
**Spinnaker Community Services Association, Inc.**

**ARCHITECTURAL CONTROL COMMITTEE NOTICE**

Notice is hereby given that all submissions to the Architectural Control Committee required under the Declaration of Restrictive Covenants of Spinnaker's Landing, Spinnaker's Reach shall be submitted as follows:

**ADDRESS TO WHICH SUBMISSIONS TO THE ARCHITECTURAL CONTROL COMMITTEE  
MAY BE MAILED (registered or certified, return receipt only):**

Spinnaker's Community Services Association, Inc.  
Attn: Architectural Control Committee  
c/o Emerald Sands, Inc.  
P.O. Box 128  
Red Springs, NC 28377

**ADDRESS TO WHICH SUBMISSIONS TO THE ARCHITECTURAL CONTROL COMMITTEE  
MAY BE HAND DELIVERED:**

Spinnaker's Community Services Association, Inc.  
Attn: Architectural Control Committee  
c/o Prestige Engineering  
101 Manatee Street  
Cape Carteret, NC 28584

**SUBMISSIONS SHALL MADE TO THE ADDRESSES ABOVE UNLESS A SUBSEQUENT NOTICE  
IS FILED WITH THE REGISTER OF DEEDS PROVIDING A DIFFERENT ADDRESS.**

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Prepared by: FRANK W. ERWIN, ATTORNEY  
P.O. Box 7206  
Jacksonville, N.C. 28540

R-7655

NORTH CAROLINA  
CARTERET COUNTY

**AMENDMENT #1 TO MASTER DECLARATION  
OF RESTRICTIVE COVENANTS OF  
SPINNAKER'S REACH  
SPINNAKER'S LANDING**

**THIS AMENDMENT TO MASTER DECLARATION OF RESTRICTIVE COVENANTS OF SPINNAKER'S REACH AND SPINNAKER'S LANDING, made this the 3<sup>rd</sup> day of <sup>February</sup> ~~JANUARY~~, 1995 by EMERALD SANDS, INC., a North Carolina corporation, and hereinafter referred to as "Declarant" and CHARLOTTE R. PARKS and husband, HARRY R. PARKS, THOMAS B. WILSON and wife, NANCY M. WILSON and MARVIN D. SMITH, hereinafter referred to as "Owners";**

Whereas, the Declarant has heretofore caused to be recorded a Master Declaration of Restrictive Covenants in Book 738, Page 946; and

And Whereas, the Declarant set out on Exhibit A of the aforesaid Declaration a description of the property which constitutes the Development Area utilizing the description of the property purchased for development as set out in that Deed Book 716, page 207, Carteret County Registry;

And Whereas, the Declarant subsequently discovered that the property described in Deed Book 716, Page 207 failed to describe a portion of the property to be developed and thereafter obtained and recorded a correction deed in Book 735, Page 126, Carteret County Registry;

And Whereas, it was the intention of the Declarant that all of the property purchased and described by the correction deed in Book 735, Page 126, Carteret County Registry be described in Exhibit A (Development Area) thereof;

AND WHEREAS, the Declarant wishes to establish Special Provisions Relating to Wetlands which shall affect all of the Development Area;

BOOK 753 PAGE 193 19

And Whereas, the Declarant together with the undersigned are the owners of not less than 99% of the subdivided lots or parts of the subdivision to which these restrictions apply;

NOW THEREFORE, the Declarant and Owners do hereby publish and declare all of the property described below shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to all the terms and conditions set forth in said Master Declaration; which is declared and agreed to in furtherance of the plan for the improvements of said property in the division thereof and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person acquiring or owning any interest in the real property improvements, their Grantees, successors, heirs, executors, administrators, devisees and assigns.

1. DESCRIPTION OF PROPERTY: Being all of the property as described on Exhibit A attached hereto and incorporated herein by reference as if fully set forth.

2. AMENDMENT OF EXHIBIT A (DEVELOPMENT AREA): Exhibit A of the Master Declaration (Development Area) recorded in Book 738, page 946, shall be and is hereby amended to include all of that property described on Exhibit A attached hereto.

3. SPECIAL PROVISIONS RELATING TO WETLANDS: All of the property subject to that Master Declaration of Covenants and Restrictions recorded in Book 783, page 946, Carteret County Registry and described in Exhibit A thereto (Development Area) and as the said Exhibit A (Development Area) is amended as set out herein, shall also be subject to the following Special Provisions Relating to Wetlands:

In developing the Subdivision, the Declarant has agreed with the State of North Carolina and the Department of the Army Corps of Engineers (pursuant to a permit issued by the State of North Carolina and the Corps of Engineers) to restrict and prohibit any future filling or other detrimental activities in the wetlands areas which presently exist on the Lots. Accordingly, all wetlands areas shown and delineated on the wetlands plats which have been approved by the Corps of Engineers shall be left in their natural state except as otherwise permitted herein. No buildings or site improvements shall be permitted within the wetlands areas; provided, however, piers, walkways and other structures erected on pilings are permitted provided the pilings do not result in fill as defined by Regulation or Statue. Site improvements shall include denuding, grassing, or altering the existing grade of any wetlands area. Site improvements shall not include hand clearing of trees, limbs, brush or other plants provided such clearing does not result in a denuded or barren area. No fill may be placed

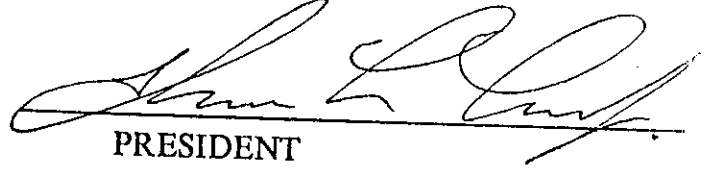
in any wetlands area. This covenant is intended to insure compliance with the permit issued by the State of North Carolina and the Department of the Army and may be enforced by the State of North Carolina. Notwithstanding any other provisions contained herein, this paragraph may not be amended, deleted or revised without the written consent of the agency of the State of North Carolina responsible for enforcing the storm water runoff rules and the agency of the Department of the Army responsible for enforcing wetlands regulations.

4. INCORPORATION BY REFERENCE: All of the terms, conditions, provisions and rights reserved by the Declarant as set forth in the original Declaration are expressly hereby incorporated by reference and made a part hereof.

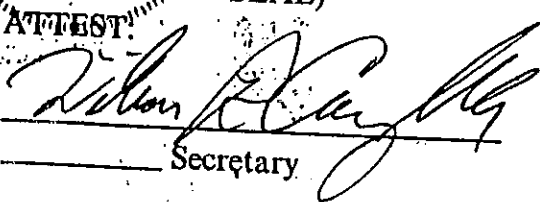
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, or if corporate, have caused this instrument to be signed in its corporate name by its duly authorized officers and its seal the foregoing to be executed in its corporate name by its duly authorized officers and its corporate seal to be hereto affixed, all by authority of its Board of Directors, first duly given.

EMERALD SANDS, INC.

By:

  
PRESIDENT



ATTEST:  
  
Secretary

✓

Prepared by: FRANK W. ERWIN, ATTORNEY  
P.O. Box 7206  
Jacksonville, N.C. 28540  
NORTH CAROLINA  
CARTERET COUNTY

**AMENDMENT #2 TO MASTER DECLARATION  
OF RESTRICTIVE COVENANTS OF  
SPINNAKER'S REACH and SPINNAKER'S LANDING**

**THIS AMENDMENT TO MASTER DECLARATION OF RESTRICTIVE COVENANTS OF SPINNAKER'S REACH AND SPINNAKER'S LANDING**, made this the 16<sup>th</sup> day of March, 1995 by EMERALD SANDS, INC., a North Carolina corporation, hereinafter referred to as "Declarant";

Whereas, the Declarant has heretofore caused to be recorded a Master Declaration of Restrictive Covenants in Book 738, Page 946 and amended in Book 753, Page 93 and

WHEREAS, the Master Declaration as above recorded and originally published expressly allowed additional tracts or parcels of land to be made subject to the terms and conditions of said Master Declaration; and

WHEREAS, the Declarant has now completed certain improvements on that certain tract of land designated as SPINNAKER'S REACH; and

WHEREAS, the Declarant is the owner of that certain tract or parcel of land designated as SPINNAKER'S REACH as shown on Exhibit A, attached hereto and by reference made a part hereof; and

WHEREAS, the Declarant will convey the property described in SPINNAKER'S REACH, as shown on said Exhibit A subject to all those conditions, restrictions, reservations, liens and charges set forth in this Amendment, the Master Declaration and amendments thereto, all of which is hereby incorporated by reference:

NOW THEREFORE, the Declarant does hereby publish and declare all of the property described below shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to all the terms and conditions set forth in this Amendment, the Master Declaration and amendments thereto; which is declared and agreed to in furtherance of the plan for the improvements of said property in the division thereof and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and

any person acquiring or owning any interest in the real property improvements, their Grantees, successors, heirs, executors, administrators, devisees and assigns.

1. DESCRIPTION OF PROPERTY: Being all of that property as described on Exhibit A attached hereto and incorporated herein by this reference as if fully set forth.

2. GENERAL RESTRICTIONS RELATING TO EXHIBIT A PROPERTY (SPINNAKER'S REACH-OCEAN SIDE) ONLY.

a. Residential Use: All structures shall be limited as set forth in the Original Declaration but, in addition to any limitations set forth therein, each living unit shall contain a minimum of 1200 heated square feet, and if two-story, the first floor shall contain a minimum of 900 enclosed square feet; except that as to lots 24 through 67, inclusive, each living unit shall contain a minimum of 1800 heated square feet; except that if the structure is a multi-family dwelling, each separate living unit for each family shall contain a minimum of 1,000 square feet. A private detached garage shall also be allowed on all lots except lots 24 through 67, inclusive, subject to Architectural Control Committee Approval. (022495)

b. Signs: All signs shall be limited as set forth in the Original Declaration but, in addition to any limitations set forth therein, each sign shall be "sand blasted."

c. Driveways/Parking: All driveways shall be limited as set forth in the Original Declaration but, in addition to any limitations set forth therein, each driveway shall be constructed shall be either approved concrete or such other paved surface which in each case must be approved by the Architectural Control Committee. No coloring of the driveways shall be allowed except as specifically approved by the Architectural Control Committee.

d. Walkways to Ocean/Gazebos: All walkways, piers, decks and other outside structures providing access to the ocean or areas away from any structure shall be specifically subject to Section 8.1 (b) of the Original Declaration and shall be subject to the same standards and provisions relating to docks. All such structures shall follow the dune line and the walking surface shall extend no higher than 18 inches above the dune line except for railings and supports thereof. The width of any walkway shall be not greater than 48 inches, exclusive of supporting pilings which may be extend to the side and above the top of the walkway a maximum of 6 inches. No gazebos, covered, roofed or framed overhead structure shall be allowed.

e. Shingles: All roofs shall be limited as set forth in the Original Declaration but, in addition to any limitations set forth therein, each roof shall be covered with cedar shake, or if an asphalt or fiberglass based shingle shall be used, it shall be a "30 year or more dimensional" shingle in appearance and shall be approved by the Architectural Control Committee.

(f) Landscaping: Landscape plans will be subject to the provisions of Section 6 (and other provisions) of the Original Declaration and will be required for all lots. Landscape plans must be submitted to the Architectural Control Committee at the same time as and together

with any submission for construction of other improvements on any lot. Any change in the appearance of the landscaping (excepting the planting of flowers and shrubs indigenous to the area), shall be deemed an alteration requiring approval.

3. SPECIAL PROVISIONS RELATING TO WETLANDS: Section 3 of the first amendment is amended by adding the following additional sentence therein: No filling of wetlands shall be undertaken beyond that required for streets. To the extent this provision conflicts with any provisions of Section 8.1 of the original Declaration and Paragraph 3 of the first amendment, this provision shall supersede and control all provisions contrary thereto.

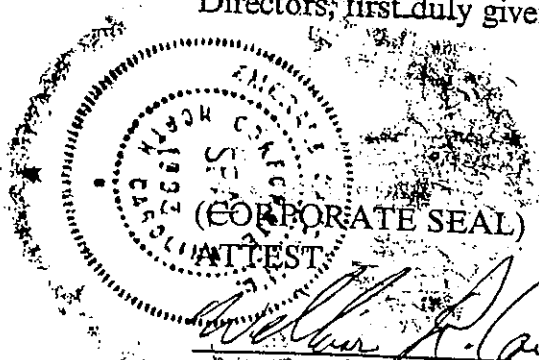

4. REMEDIES EXTENDED TO GOVERNMENTAL BODIES: To ensure that this subdivision is maintained consistent with the laws of the State of North Carolina, Carteret County and the City of Emerald Isle, the State of North Carolina, Carteret County, and the City of Emerald Isle, and any regulatory body or office thereof is specifically empowered to take such acts necessary by and through its officers to enforce any of these covenants against an owner or the Association. Notwithstanding any other provisions contained herein, neither this paragraph nor paragraph 3 preceding, may be amended, deleted or revised without the written consent of the State of North Carolina, the Department of the Army, the County of Carteret, and the Town of Emerald Isle, and any regulatory body or office thereof is specifically empowered to take such acts necessary by and through its officers to enforce any of these covenants against an owner or the Association.

5. INCORPORATION BY REFERENCE: All of the terms, conditions, provisions and rights reserved by the Declarant as set forth in the original Declaration and Amendment #1 thereto, are expressly hereby incorporated by reference and made a part hereof. By the submission of SPINNAKER'S REACH to the terms and conditions of this Declaration, the Declarant expressly reserves all those rights and privileges as set forth in the original Declaration as above referred to.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, or if corporate, have caused this instrument to be signed in its corporate name by its duly authorized officers and its seal the foregoing to be executed in its corporate name by its duly authorized officers and its corporate seal to be hereto affixed, all by authority of its Board of Directors, first duly given.

EMERALD SANDS, INC.

By:   
PRESIDENT

  
  
Secretary

NORTH CAROLINA  
COUNTY OF Carteret

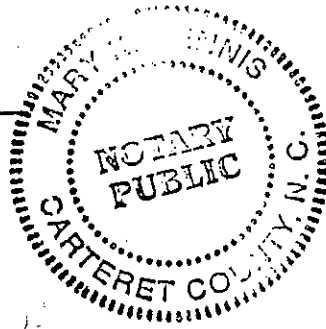
I, a Notary Public of the County State aforesaid, certify that William R. Campbell, personally came before me this day acknowledged that he/she is \_\_\_ Secretary of EMERALD SANDS, INC, a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_ President, sealed with its corporate seal and attested by him/her as its \_\_\_ Secretary.

Witness my hand and official stamp or seal, this 10th day of March FEBRUARY, 1995.

Mary K. Dennis

Notary Public

My commission expires: 6-24-97



NORTH CAROLINA, CARTERET COUNTY

The foregoing certificate(s) of Mary K. Dennis is (are) certified to be correct. This instrument was presented for registration and recorded in this office in Book 753 Page 194 This 27 day of March 1995 at 8:05 O'clock A.M.

Sharon Piner  
Register of Deeds

By Jay Lawrence  
Assistant, Deputy

DECLARATIONS OF RESTRICTIVE COVENANTS  
EMERALD SANDS, INC.  
EXHIBIT A TO AMENDMENT #2  
SPINNAKER'S REACH  
(OCEAN SIDE)  
(PROJECT AREA)

Being all of those lots as shown on that Plat entitled "PHASE ONE OF SPINNAKER'S REACH BLOCK 47 SOUTH (SECTION 370)" which map was recorded in Map Book 28, Page 759, Carteret County Registry.

RESCOV/PUD/AMDMT.FRM(082692)

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rev 72894 rev 091992 rev 012095 a1

rev 012195 a1 R7455 rev 12695 rev 022495 r2/REV030195R2 rev031595r2

rev 032295 r2