

FILED FOR REGISTRATION
BOOK 785 PAGE 231

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
IBIS ROOST
PHASE ONE

89 OCT 24 PM 2:58

ROBERT J. TELSON
REGISTER OF DEEDS
BRUNSWICK COUNTY, N.C.

This Declaration, made the 31st day of August, 1989, by TERRY F. TURNER & CO., a North Carolina Corporation, hereinafter referred to as "Declarant" (whether one or more);

WITNESSETH:

Whereas, Declarant is the owner of certain real property in Smithville Township, Brunswick County, North Carolina, which is more particularly described as follows:

Being all of Phase One of Ibis Roost, according to the plat thereof recorded in Map Cabinet T, Instrument 373, in the Office of the Register of Deeds of Brunswick County, North Carolina, to which plat reference is hereby made for a more particular description.

Now, therefore, Declarant hereby declares that all of the Properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

SECTION 1. Association shall mean and refer to Ibis Roost HOA, Inc., a North Carolina non-profit corporation, its successors and assigns, the owners association organized for the mutual benefit and protection of the Properties. All property owners of lots in Ibis Roost and any adjoining areas hereafter developed and subjected to this Declaration, if any, shall be members of the Association, which membership shall be appurtenant to and may not be separated from the ownership of such single family lot.

SECTION 2. Board of Directors of Board shall mean those persons elected or appointed and acting collectively as the directors of the Association.

SECTION 3. 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.

SECTION 4. Properties shall mean and refer to all of Ibis Roost, as described above, and any of the additional properties that may hereafter be brought within the jurisdiction of the Association as herein provided all of which are hereby designated as a multi-family site as defined in Article II, Section 6 of the Declaration Restated (see Section 14 below).

SECTION 5. Additional Properties shall mean and refer to any lands adjoining the Properties which are now owned or may be hereafter acquired or developed by Declarant and annexed to and made a part of the Properties by the Declarant and subjected to this Declaration without the assent or vote of the Owners of lots as hereinafter provided. The annexation of such additional Properties shall become effective by the recording by the Declarant of an Amended Declaration for each new phase annexed.

Draftsman: DAVID C. BAREFOOT
BURNETT, BURNETT, BAREFOOT & BAIN
110 North Fifth Avenue/Post Office Box 89
Wilmington, North Carolina 28402

David C. Barefoot
36.00
17
24.00
10.00
10.00

SECTION 6. Amenities shall mean the facilities constructed, erected, or installed on the Common Area for the use, benefit and enjoyment of Members. The amenities for Ibis Roost shall consist of a clubhouse and a swimming pool with decks around it which shall be constructed when 12 lots improved with cottages have been sold. Construction of the amenities will commence no later than thirty (30) days after receipt of a deposit for purchase of the 12th cottages in the Properties, and will be completed within 12 months after commencement.

SECTION 7. Common Area shall mean and refer to all real property owned by the Association from time to time for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot shall be all the area designated as "Common Area" on the plat of Phase I, This Roost, if any.

SECTION 8. Limited Common Area shall mean those common areas and facilities which are reserved for the use and benefit of a certain lot or lots to the exclusion of all other lots as more specifically shown and designated on the map or maps of any and all phases of This Roost.

SECTION 9. Common Expenses shall mean and include (a) expenses of administration, maintenance, repair or replacement of residences and common areas, including boardwalks; (b) expenses declared to be common expenses under the provisions of this Declaration or the By-laws of the Association; (c) hazard, liability or such other insurance premiums as the Declaration or By-laws may require or the Association shall, from time to time, purchase; (d) expenses agreed by the members to be common expenses of the Association.

SECTION 10. Common Profits shall mean and refer to the balance of all income, rents, profits and revenues of the Association remaining after the deduction of common expenses or reserves therefor. Common profits shall not mean or include any sums lawfully assessed against the members by the Association.

SECTION 11. Lot shall mean and refer to any of the numbered lots in any phase of This Roost as shown on any of the maps or plats thereof recorded in the Brunswick County Registry, together with all improvements, including any structure or dwelling unit, constructed thereon.

SECTION 12. Declarant shall be used interchangeably with "Developer" (which designations may be used herein in the third person neuter for convenience only, but such terms shall include singular, plural, masculine and neuter as required by the context) to mean and refer to Terry F. Turner & Co., a North Carolina Corporation, its successors and assigns, to whom the rights of Declarant shall be expressly transferred.

SECTION 13. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 14. Declaration Restated shall mean that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bald Head Island, Stage I, recorded in Book 498 at Page 260 of the Brunswick County Registry, and all amendments and modifications thereof, to the extent the same are applicable hereto, all of which are incorporated herein by reference.

SECTION 15. Membership shall mean and refer to the rights, benefits, duties and obligations, evidenced by an appropriate certificate, which shall inure to the benefit of and burden each member of the Association as hereinafter set forth in Article V.

Every person who is a record owner of a fee or undivided fee interest in any lot which is subject, by covenants of record, to assessment by the Association, including contract sellers but excluding persons who hold an interest merely as security for the performance of an obligation, shall be a member both of Bald Head Association and the Association. Ownership of such

interest shall be the sole qualification for such membership. There shall be two (2) classes of membership as set forth hereinafter in Article V, Section 2, (Voting Rights) and each class of membership shall have the votes as defined therein. Membership shall be appurtenant to and may not be separated from ownership of any lot which is the subject of this assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

SECTION 16. Member shall mean and refer to every person or entity who has a membership in the Association.

ARTICLE II.

PROPERTY RIGHTS

SECTION 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to suspend the voting rights and privileges by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations;

B. The right of the Association to dedicate or transfer all or part of the Common Area, if any, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective until approved by vote of at least two-thirds (2/3) of the members as indicated in an instrument executed by the corporation and recorded in the Brunswick County Registry.

C. The right of the Association to impose regulations for the use and enjoyment of the Common Area, if any, and improvements thereon, which regulations may further restrict the use of the Common Area.

D. The right of the Association to limit the number of guests or members.

SECTION 2. Delegation of Use. 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 tenant or contract purchasers provided that such shall reside on the property.

SECTION 3. Conveyance of Common Areas and Facilities. The Declarant hereby covenants, for itself, its successors and assigns, that it will, at the time determined by Declarant but in no event later than five (5) years from the date hereof convey fee simple title to the roadways and platted areas as shown on the recorded map referred to in the premises of this Declaration, to the Association free and clear of all liens and encumbrances but subject to these restrictions, utility and drainage easements of record, easements to governmental authorities and utility companies providing services to the property. Similarly the Declarant will convey to the Association, upon the same conditions and for the same uses and purposes, the Common Areas which are part of any additional properties annexed hereto in the future.

SECTION 4. Off-Street Parking. The owner of each lot shall provide off-street parking space for his own vehicles and those of his guests, and the Association, in its discretion, may control or prohibit the use of common area for parking of private vehicles. The owner shall be entitled to the right of ingress and egress to his lot. No boats, trailers, campers or recreational vehicles shall be parked upon the Common Areas or rights of way of any public or private street in or adjacent to the property. All boats, trailers, campers or recreational vehicles shall be parked only in such areas designated for parking such vehicles and upon such terms and conditions as shall be established by the Declarant, its successors or assigns.

SECTION 5. Lot Restrictions. Each lot shall constitute a residential building site and shall be used for residential purposes only. The lay of the lots, as shown on the recorded plat, shall be substantially adhered to provided, however, that with the written approval of Declarant, its successors or assigns, the size and shape of any lot may be altered; provided further that no lot or group of lots may be re-subdivided so as to produce a greater number of lots than shown on the aforementioned recorded map, and no structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling unless otherwise approved by the Declarant.

ARTICLE III.

EASEMENTS

SECTION 1. Perpetual, alienable easements are reserved as necessary in the Properties and the Common Areas thereof for the installation and maintenance of underground utilities and drainage facilities. The Association shall have the power and authority to create and establish in, over, upon and across the common area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the property.

SECTION 2. All lots, common areas and limited common areas and facilities are hereby subjected to an easement for encroachments created by construction, settling and overhangs for all buildings including, without limitation, the overhanging eaves, gutters, downspouts exterior storage rooms, walls, boardwalks or walkways thereof, constructed by Declarant, its successors and assigns. A valid easement for said encroachments is hereby created and shall exist for the maintenance of same so long as such encroachments shall stand.

SECTION 3. The Declarant hereby reserves unto itself, its successors and assigns, perpetual, alienable easements over all streets and common areas as necessary to provide access, ingress and egress to the Additional Properties, in the event the Declarant, its successors or assigns should acquire or develop any Additional Properties adjoining this Boost and annex the same to this development as herein provided.

SECTION 4. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the lots and common area in the performance of their duties.

SECTION 5. In case of any emergency originating in or threatening any lot or the common areas, regardless whether any lot owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the lot owners, and such right of entry shall be immediate.

SECTION 6. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right, on, over and under the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each lot and such other areas as are shown on the plat of the Properties recorded or to be recorded in the office of the Registrar of Deeds of Brunswick County; provided further, that the Declarant may cut drainways for surface water whenever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe

utility installation and to maintain reasonable standards of health, safety and appearance. It further reserves the right to locate wells, pumping stations, and tanks within residential areas on any walkway, or on any residential lot now or subsequently designated for such use or to locate same upon any lot with the permission of the owner of such lot. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

SECTION 7. The Declarant reserves unto itself, its successors and assigns, the right to subject the real property in this Subdivision to a contract with Carolina Power & Light Company for installation of street lighting, which contract requires or will require a continuing monthly payment to Carolina Power & Light Company by each residential customer for street lighting service.

SECTION 8. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

ARTICLE IV.

UTILITIES

SECTION 1. Water Service. Water service for Ibis Roost, all Phases, shall be provided by Bald Head Island Utilities, Inc., its successors or assigns. No lot owner may drill or otherwise construct a water well on any lot in Ibis Roost, or use any other source of water supply for household use, except for irrigation purposes, and then only with the consent of Bald Head Utilities, Inc., its successor assigns.

SECTION 2. Sewer Service. All lots will be tied into the Bald Head Island Sewer System. All sewer tap fees and monthly charges for sewer service will be the responsibility of each individual lot owner.

ARTICLE V.

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Qualification. Every Owner of a lot in the Properties shall be a member of Bald Head Association and the Association. Membership in both associations shall be appurtenant to and may not be separated from ownership of any lot.

SECTION 2. Voting Rights. The Association shall have two (2) classes of voting membership:

A. **Class A.** Class A members shall be all owners of lots in Ibis Roost with the exception of the Declarant and shall be entitled to one vote in the affairs of the Association 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.

B. **Class B.** The Class B member shall be the Declarant who shall be entitled to five (5) votes for each lot in Ibis Roost, any and all phases, owned by Declarant. The Class B membership shall cease and be converted to Class A membership upon the earlier to occur of:

- (1). December 31, 1999; or

(2). When the total votes outstanding in the Class A membership exceed the total votes outstanding in the Class B membership.

ARTICLE VI.

MANAGEMENT AND CONTROL

Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with the Declaration and the By-Laws; PROVIDED, HOWEVER, that all of the powers and duties of the Board of Directors may be exercised by the Declarant until such time as 90% of the lots in undeveloped property in adjoining Sections owned by Declarant have been sold and conveyed by the Declarant to purchasers or until December 31, 1999, whichever occurs first. Management and control may be transferred to the lot owners at any time but in all events, no later than 120 days after the happening of the earlier of the above events.

ARTICLE VII.

COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefrom, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- A. Annual assessments or charges, and
- B. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and
- C. Insurance assessments; and
- D. To the appropriate governing taxing authority, a pro rata share of ad valorem taxes levied against the Common Area.

The annual, special and insurance assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

SECTION 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of all easements, utilities and the Common Areas. The funds arising from said assessments or charges, may be used for any or all of the following purposes: Maintenance and improvements of the common areas, streets, roads, drives, drainage and utility easements and rights of way enforcing these restrictions; and, in addition, doing any other things necessary or desirable in the opinion of the Association to keep the property in neat and good order and to provide for the health, welfare and safety of Owners and residents of This Roost.

SECTION 3. Annual Assessments. Annual assessments shall be in an amount to be fixed from year to year by the Board of Directors which may establish different rates from year to year as it may deem necessary for the purposes set forth in Section 2 above. The amount of the annual assessment against each lot for any given year shall be fixed at least 30 days in advance of the annual assessment period; provided, however, that the first annual assessment shall be set prior to the conveyance of the first lot to an Owner

and written notice to the Owners to be subjected thereto shall be delivered to the Owners at or prior to the closing of their lots. Written notice of each annual assessment thereafter shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. 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 had been paid.

A. 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 each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership, except as herein provided.

B. 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 five percent (5%) by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.

C. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum; provided that the Board of Directors may increase the amount of the annual assessment to a maximum of Three Hundred Sixty Dollars (\$360.00) per lot notwithstanding the provisions of subparagraphs A and B above, and thereafter the limitations set forth in said subparagraph shall apply to any annual increase.

SECTION 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the 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 members who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5. Insurance. The Board of Directors on behalf of the Association, as a common expense, shall at all times keep the property of the Association, if any, insured against loss or damage by fire or other hazards insured against, and other such risks, including, but not limited to directors' liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the Properties and Common Area, which insurance shall be payable in case of loss to the Association for all members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each member to insure his personal property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by members or their mortgagees.

SECTION 6. Insurance Assessments. All insurance policy premiums on the Common Areas for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the Owners equally as an additional annual assessment, (herein called "Insurance Assessment") which shall be in addition to the amounts provided for under Section 3 above, an amount sufficient to pay the annual cost of all such insurance premiums.

SECTION 7. Notice And Quorum For Any Action Authorized Under SECTIONS 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of

members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. The required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 8. Uniform Rate Of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

SECTION 9. Commencement of Assessments. Assessments for each lot shall commence upon the date of acceptance by an owner of a deed from Declarant. Declarant shall not be required to pay maintenance assessments on unsold lots retained by the Declarant, except for those lots retained for rental purposes for which Declarant shall pay maintenance assessments which shall commence upon the date the same are occupied by a tenant. Provided, however, that for any lots retained by Declarant for other than rental purposes, Declarant shall pay to the Association annually, in lieu of any other assessments, the pro rata share of insurance assessments attributable to the lots owned by Declarant, as the same become due.

SECTION 10. Effect Of Nonpayment Of Assessments And Remedies Of The Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date of the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

SECTION 11. Subordination Of The Lien To Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first 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 assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VIII.

ARCHITECTURAL CONTROL

SECTION 1. Developer's Rights. All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the By-laws of the Association shall be exercised and performed by the Declarant or its Designee, so long as Declarant shall own any lot in the Properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration.

SECTION 2. Building and Site Improvements. No dwelling, fence, wall or other structure shall be commenced, erected, or maintained upon any lot in the Properties, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, or its designee, or, after the sale of all lots by Declarant, by the Board of Directors of the Association, or by an architectural control committee composed of three (3) or more representatives appointed by the Board. In the event the Declarant, or its designee, or, if applicable, the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to

it, approval will not be required and this Article will be deemed to have been fully complied with. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant or Architectural Control Committee shall deem sufficient. One copy of all plans and related data shall be furnished to the Declarant or Architectural Control Committee, as the case may be, for its records. Neither the Declarant nor the Architectural Control Committee shall be responsible for any structural or other defects in plans of specifications submitted to it or any structure erected according to such plans and specifications.

SECTION 3. Approval of Plans:

A. No house plans will be approved unless the proposed house shall have a minimum of 1000 square feet of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas; provided, further, that shed type porches, even though attached to the house are specifically excluded from the definition of the aforesaid term "enclosed dwelling area".

B. Since the establishment of inflexible building setback lines for location of houses on lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines are established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any lot shall be controlled by and must be approved absolutely by the Declarant or the Architectural Control Committee, as the case may be.

C. The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder, due to strikes, fires, national emergency or natural calamities.

D. No structure shall be erected, altered, placed or permitted to remain on any lot, except one single family dwelling not to exceed two stories in height, unless the Declarant or the Architectural Control Committee, as the case may be, approves in writing a structure of more than two stories, and one or more small accessory buildings (which may include a detached private garage, or guest facilities) provided the use of such dwelling or accessory building does not in the opinion of the Declarant or Architectural Control Committee overcrowd the site, and provided further, that such buildings are not used for any activity normally conducted as a business.

E. All service utilities, fuel tanks, clothes lines, wood piles and trash and garbage accumulations are to be enclosed within a fence, wall or plant screen of a type and size approved by the Declarant or the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. All mail and newspaper boxes shall be uniform in design. Design for mail and newspaper boxes shall be furnished by Declarant. No fences shall at any time be placed or permitted to remain on any lot nearer the street line than the rear line of the main dwelling on the lot.

F. Landscaping and off street parking for not less than two authorized (2) passenger vehicles must be provided on each lot prior to the occupancy of any dwelling constructed on said lot. Such parking areas and driveways thereto shall be constructed of such material as may be approved by Declarant.

SECTION 4. Maintenance By Association. The Association, at its expense, shall be responsible for maintaining, repairing and replacing the planting easement areas, the storm water drainage system, including the detention pond, all drainage lines, pipes and ditches which are located on the properties, except those constructed by individual lot owners and located within individual lots. The Association shall have the right to go onto the lots at reasonable times for the purpose of maintaining, repairing and replacing all utility and drainage lines and pipes which might be located on such lots; and each Owner hereby grants permission to the Association to enter his lot for such purposes.

In the event that such need for maintenance, repair or replacement (other than such being caused by fire, lightning, windstorms, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance Policies) is caused through the willful, or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the assessment to which such Lot is subject.

The Association shall maintain all common areas, including roadways, plantings and shrubbery, boardwalks or walkways, located thereon, and lighting fixtures and shall pay all costs of operation thereof including premiums associated with general liability insurance insuring the Association from liability arising from ownership and operation thereof.

In addition to the maintenance and repair of the common areas the Association shall be responsible for and provide for the maintenance and repair of the following:

- (a) all yards, trees, shrubs, grass and other landscaping on each lot; and
- (b) all exterior surfaces of the structures and improvements located on a lot including by way of example but not in limitation, painting, repairing, replacing of exterior siding, roofs, decks, porches, patios, walks, driveways, parking areas and all other exterior parts of the structures and improvements located on a lot excepting, however, glass surfaces which shall be replaced, repaired and maintained by Owner. This shall include any limited common areas.

In order to enable the Association to accomplish the foregoing there is hereby reserved to the Association the right to unobstructed access over, on, upon, through and across each lot and the structures and improvements thereon and its limited common area, if any, at all reasonable times to perform the maintenance and repair required under this Article.

In the event that any maintenance or repair of the Lot, and any structures and improvements thereon, is required to be done or performed as a result of the negligent or willful acts of the Owner, as determined by the Board of Directors of the Association, or the family, tenants, contract purchasers, guests or invitees of the Owner, or is caused by fire, wind, rain, blowing water, lightning, smoke or other hazard or casualty then, in the sole discretion of the Board of Directors the costs of such maintenance or repairs, not fully covered by insurance, may be levied as a special assessment against only the Lot sustaining such damage which the Owner shall pay to the Association within fifteen (15) days of the date of written notice to the Owner from the Association requesting such payment. Ordinary wear and tear is not contemplated as being within the coverage of this paragraph.

ARTICLE IX.

USE RESTRICTIONS

SECTION 1. Land Use And Building Type. No lot in Ibis Roost, shall be used for any purposes except for residential purposes. All lots (herein referred to as "single family lots") in Ibis Roost, shall be restricted for construction of single family dwellings only. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article VII of this Declaration relating to architectural control. Different land use restrictions and architectural control guide lines may be established for adjoining properties to be developed by Declarant.

SECTION 2. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on such lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

SECTION 3. Lot Maintenance. In the event that any lot owner shall fail or refuse to keep such premises free from weeds, underbrush or refuse piles, or unsightly growth or objects, then, after thirty (30) days notice from the Architectural Control Committee, the Association, or its designee, shall enter upon such lands and remove the same at the expense of the owner, and such entrance shall not be deemed a trespass. In the event of such removal, a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such lot, including collection costs and such amounts shall be due and payable within thirty (30) days after the owner is billed therefor. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens.

SECTION 4. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot any time as a residence either temporarily or permanently.

SECTION 5. Recreational Vehicles. No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle, shall be permitted to remain on any lot or on any street in the properties at any time, without the written consent of the Association or its designee.

SECTION 6. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed.

SECTION 7. TV Satellite Dishes And Outside Antennas. No TV satellite signal receiving dishes will be permitted on any lot at any time. No outside radio or television antennas shall be erected on any lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its Architectural Control Committee.

SECTION 8. Window Coverings. All drapes, curtains or other similar materials hung at windows, or in any manner as to be visible from the outside, of any building erected upon any lot shall be of a white or neutral background material.

SECTION 9. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any lot shall be clear, white or non-frost lights or bulbs.

SECTION 10. Junk Vehicles. No inoperable vehicle or vehicles will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the owner's expense.

SECTION 11. Water And Sewer Service. All lot owners shall be required to use water and sewer supplied by the companies servicing the Properties for all household uses; a separate water system for the purpose of watering lawns, gardens and other outdoor uses shall not be permitted without the consent of the Declarant, its successors and assigns.

SECTION 12. Water And Sewer Taps. Declarant reserves the right to charge separate water and sewer tap fees for each lot sold which fee will be paid directly to Declarant.

SECTION 13. Trash And Garbage Collection. The Properties shall be served exclusively by a single trash and garbage collection service which shall be selected by Declarant and approved by the Association.

SECTION 14. Signs. No signs (including "For Rent", "For Sale", and other similar signs) or property identification signs shall be erected or maintained on any lot except with express written permission of the Declarant, its successor or assigns, except as may be required by legal proceedings.

ARTICLE I.

ANNEXATION OF ADDITIONAL PROPERTIES AND ANNEXATION TO BALD HEAD ASSOCIATION

SECTION 1. Except as provided in Section 2 below, annexation of additional property shall require the assent of two-thirds (2/3) of the members at a meeting called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

SECTION 2. If the Declarant, its successors or assigns, shall develop all or any lands adjoining the Properties, said additional tract or any portion thereof may be annexed to said Properties without the assent of the members, provided, however, the development of the additional Properties permits no more than five dwelling units per acre. Annexation provided for in this section shall become effective upon the filing by the Declarant of a Supplemental or Amended Declaration in the Office of the Register of Deeds of Brunswick County. Such additional phases to be annexed hereto shall be developed in the same general scheme of development of Ibis Roost, Phase I.

SECTION 3. Upon the filing of this Declaration in the Registry, the Declarant does hereby declare that the property described in Exhibit A and any additional parts or portions of the real property described in Exhibit B which shall hereafter be annexed as additional phases of Ibis Roost Subdivision pursuant to the provisions of this Declaration shall also be held, sold, transferred and conveyed subject to the Declaration Restated except as modified by this Declaration. Declarant further declares that each lot in Ibis Roost shall be an assessable property as that term is defined in the "Declaration Restated" and that all rights and obligations appurtenant thereto shall inure to the owners of Lots as defined herein, including, without limitation, the obligation to pay such assessments as shall be levied or assessed from time to time by the Bald Head Association. Every owner of a lot in Ibis Roost shall become and be a member of the Bald Head Association as well as a member of the Association. A membership in one association does not exclude the requirement of membership in the other association.

ARTICLE XI.**GENERAL PROVISIONS**

SECTION 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 2. Enforcement Of Storm Water Runoff Regulations. The State of North Carolina is hereby made a beneficiary of this Declaration to the extent necessary to enforce its storm water runoff regulations as the same may be amended from time to time.

SECTION 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

SECTION 4. Lots Subject To Declaration. All present and future owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the Owner of any lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any lot as though such provisions were made a part of each and every deed of conveyance or lease.

SECTION 5. Amendment of Declaration. Except as provided elsewhere the covenants and restrictions of this Declaration may be amended only by an instrument duly recorded in the Office of the Register of Deeds of New Hanover County executed by the duly authorized officers of the Association upon the vote of not less than sixty percent (60%) of the Lot Owners; provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto Declarant.

ARTICLE XII**RULES AND REGULATIONS**

SECTION 1. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of each lot and common areas not inconsistent with the rules and regulations of Bald Head Island Association. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in the Book of Resolutions which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

SECTION 2. Each lot and the common areas and facilities shall be for the following uses and subject to the following restrictions in addition to those set forth in the By-laws:

- (a) All buildings and common areas and facilities shall be used for residential and related common purposes only. No lot shall be subdivided. Each shall be used only as a single-family residence and for no other purpose except that the Declarant or Declarant's builders may use one or more such lots for offices and/or model homes for purposes of promoting sales within the subdivision.

(b) Nothing shall be kept and no activities shall be carried on in any building or on any lot or the common areas and facilities which shall increase the rate of insurance applicable to residential use for the property or the contents thereof. No owner shall do or keep anything or permit or allow anything to be done or kept on his lot or any improvements thereto in the common areas or facilities which will result in the cancellation of any insurance on any portion of the property or the contents thereof or which would be in violation of any law, ordinance or regulation. No waste shall be committed on any portion of the common areas or facilities.

(c) No immoral, improper, offensive or unlawful use shall be made of the property or any part thereof, and all valid laws, ordinances and regulations of any governmental agency having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the property shall be complied with by and at the sole expense of the owner or the Association, whichever shall have the obligation to maintain or repair such portions of the property.

(d) Nothing shall be done in or to any lot or improvement thereto or upon any of the common areas or facilities which shall impair the structural integrity of any building, residence or portion of the common areas and facilities or which would impair or alter the exterior of any such improvement or portion thereof except in the manner as provided in this Declaration.

(e) No industry, business, trade, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained or permitted on any of the property except that the Declarant or its agent may use any unsold lot or improvements thereto for model homes to promote sales thereof or to lease the same.

(f) No owner shall display or cause or allow to be displayed to public view any signs, placards, posters, billboards, or identifying name or number upon any home, building or any portion of the common areas and facilities except as may be allowed by the Association pursuant to its By-laws.

(g) No person shall undertake, cause or allow any alterations or construction in or upon any portion of the common areas and facilities except at the direction of and with the express written consent of the Association.

(h) No trailer, tent, shack, recreational vehicle, barn or other outbuilding shall be erected or placed upon any lot or building site covered by these covenants without the approval of the Association.

(i) No livestock, poultry or animals of any kind other than dogs, cats or other household pets shall be kept or maintained upon any part of the property. Further, no pet runs, cages or houses may be kept or maintained on any lot or on the common area and all such dogs, cats or other household pets shall be kept within the confines of the improvements to any lot.

(j) The common areas, from the time of the conveyance to the Association, shall be the exclusive property of the Association and no lot owners of this subdivision shall have any right to use the common areas except in accordance with the By-laws, rules and regulations of the Association. Nothing contained in these restrictions shall prevent the Association from conveying title to the roadways in This Roost to the Village of Bald Head Island upon such terms and obligations as the road shall deem appropriate.

(k) All telephone, electric and other utility lines and connections between the main utility lines located on common property and any improvements on any lot or other building located thereon shall be concealed or located underground so as not to be visible.

Further, Declarant reserves the right to subject real property in this subdivision to a contract with Carolina Power & Light Company for the installation of underground electric cables, the installation of street lighting, either or both of which may require an initial payment or a continuing monthly payment to Carolina Light & Power Company by the owner of each building. Declarant further reserves the right to assign the easement herein reserved to any subsequent developer or utility company, including but not limited to the Bald Head Island Utility Company, in the discretion of the Declarant, its successors and assigns.

(l) All personal property of the owners, including yard furniture, firewood, bicycles, motorbikes, boats, beach furniture, toys, trash cans, and all other personal property, must be stored or kept concealed within the improvements to any lot and no such item may be kept in the yard of any lot, it being the desire of the Declarant to maintain the subdivision in an aesthetically pleasing manner, free of exterior storage and display of unsightly clutter and to ensure the continuing beauty and neatness of this Coast.

(m) No single family residence constructed on a lot shall contain less than 1,000 square feet of interior living heated space.

(n) No residence or other structure shall be constructed on a lot without first complying with the provisions of Article VIII of this Declaration except that Declarant shall have the right to construct improvements, including without limitation, single family residential homes, on lots without complying with said Article VIII so long as the same are similar to the general scheme of development on prior lots.

SECTION 3. No obnoxious or offensive activity shall be carried on or upon the property nor shall anything be done which may be or become a nuisance or annoyance to residences within the property.

ARTICLE XIII

Amendment to Declaration

This Declaration may be amended in the following manner:

(a) The Declarant shall have the sole and exclusive right to amend this Declaration without the knowledge, consent or approval of any other Owner until the first to occur of (i) the date upon which the Class B memberships are converted to Class A memberships as set out in the Articles of Incorporation of the Association, or (ii) twelve o'clock P.M. on December 31, 1999. Any such amendment shall be effective when a written instrument in recordable form signed by the Declarant setting forth such amendment is duly recorded in the Office of the Register of Deeds of Brunswick County, North Carolina.

(b) After the first to occur of twelve o'clock P.M. on December 31, 1999 or when the Class B memberships are converted into Class A memberships, this Declaration may be amended by an instrument in recordable form setting forth such amendment signed by not less than two-thirds (2/3) of the lot owners which such amendment shall be effective when recorded in the Office of the Register of Deeds of Brunswick County, North Carolina; provided, however, no amendment shall be allowed that would eliminate the right and ability of the Association to levy and collect assessments or to pay for common expenses as hereinbefore provided.

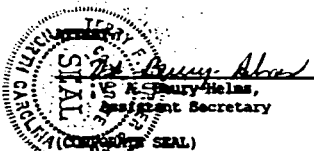
0785 246

The Board of Directors of the Association may amend this Declaration without the consent of the owners to correct any obvious errors or inconsistencies in drafting, typing or reproduction or to enable the Association to qualify as a non-profit corporation for purposes of North Carolina revenue laws and the Internal Revenue Code of the United States of America. All amendments shall be certified as an official act of the Association by the Board and shall thereafter be recorded in the office of the Register of Deeds for Brunswick County and shall be effective upon recordation.

IN WITNESS WHEREOF, TERRY F. TURNER & CO., a North Carolina Corporation, the Declarant herein, has caused this Declaration to be executed in its corporate name and its corporate seal affixed by its duly authorized officers this 31 day of August, 1989.

TERRY F. TURNER & CO.,
A North Carolina Corporation

By Terry F. Turner
TERRY F. TURNER, President

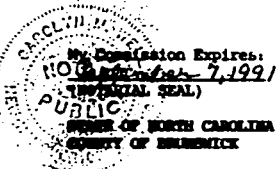


STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, Carolyn M. Wells a Notary Public of the aforesaid County and State, certify that V. A. Beury-Helms personally appeared before me this day and acknowledged that she is the Assistant Secretary of TERRY F. TURNER & CO., a North Carolina Corporation, and that by authority duly given and as the act of the said corporation the foregoing Instrument was signed in its name by its President, sealed with its corporate seal and attested by herself as its Assistant Secretary.

WITNESS my hand and notarial seal this 31st day of August, 1989.

Carolyn M. Wells
Notary Public



The foregoing certificate of Carolyn M. Wells, a Notary Public is certified to be correct. This the 26th day of August, 1989. at 2:58 PM.

Robert J. Borinson

ROBERT J. BORINSON
Register of Deeds-Brunswick County

By Robin G. Farmer
Deputy/Assistant