

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

STATE OF NORTH CAROLINA

COUNTY OF DARE

KNOW ALL MEN BY THESE PRESENTS, That this Declaration of Covenants, Conditions and Restrictions, made and entered into on this 26th day of July, A.D., 1977, by VENTURE MANAGEMENT INCORPORATED, a Georgia corporation qualified to do business in the State of North Carolina, hereinafter referred to as Developer.

## W I T N E S S E T H:

WHEREAS, Developer is the owner of the real property described in Article One of this Declaration and desires to create thereon a residential community (the "Community") together with a permanent lake, streets, roads, footways, open spaces, entrances, drainage facilities, access easements, site lighting and signage and any other common facilities (the "facilities") for the benefit of the Community; and,

WHEREAS, Developer desires to provide for the preservation of the values and amenities in the Community and for the maintenance of the facilities and, to this end, desires to subject the real property described in Article One to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is, and are, for the benefit of said real property and each owner thereof; and,

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants, conditions and restrictions and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, Developer has caused to be incorporated under the laws of the State of North Carolina a non-profit corporation, Sanderling Homes Association, Inc., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Article One, and such additions thereto as may hereafter be made pursuant to Article One hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the terms and provisions of the covenants, conditions, restrictions, charges and

liens (sometimes referred to herein as "covenants and restrictions" or "this Declaration") hereinafter set forth.

ARTICLE ONE

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration (the "Existing Property") is located in Dare County, North Carolina, and is more particularly described as follows:

(See Schedule "A" attached hereto and incorporated herein by reference)

Section 2. Additions to Declaration. Additional real property herein referred to as "additional units", may become subject to this Declaration by recordation of a supplemental declaration(s) by Developer wherein any such additional units are specifically made subject to and governed by all or a portion of this Declaration and such other covenants, conditions, restrictions, rights and obligations as the Developer in its sole discretion shall deem appropriate. In the event of any such subsequent supplemental declaration(s), the rights of all original and additional Members of the Association shall be uniform.

ARTICLE TWO

DEFINITIONS

Section 1. The following words when used in this Declaration or any supplemental Declaration (unless the context shall require otherwise) shall have the following meanings:

- (a) "Association" shall mean and refer to the Sanderling Homes Association, Inc.; and "By-Laws" shall mean and refer to the By-Laws of the Association.
- (b) "Board" shall mean and refer to the Board of Directors of the Sanderling Homes Association, Inc.
- (c) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties labelled as "Common Properties" or shown as streets or roads and as such intended to be devoted to the common use and enjoyment of the Owners of the Lots, subject to special rights, if any, granted Owners of particular Lots, which are a part of The Properties.
- (d) "Living Area" shall mean and refer to those heated and/or air-conditioned areas within a Living Unit which shall not include garages, carports, porches, patios, or storage areas.

(e) "Living Unit" shall mean and refer to any building or portion of a building, situated upon any Lot, which is a part of The Properties, designed and intended for use and occupancy as a residence by a single family.

(f) "Lot" shall mean and refer to any plot of land within The Properties shown upon any recorded subdivision map of The Properties, or any portion thereof, with the exception of Common Properties as heretofore defined.

(g) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article Five, Section 1, hereof.

(h) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties, but notwithstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(i) "The Properties" shall mean and refer to all the Existing Property and any additional units of Developer as are subject to this Declaration or any Supplemental Declaration under the provisions of Article One, hereof.

(j) The "Developer" shall mean and refer to Venture Management Incorporated ("VMI") and any person or entity who is specifically assigned the rights and interests of VMI hereunder.

(k) "Common Expense" shall mean and refer to:

(i) Expense of administration, maintenance, repair or replacement of the Common Properties.

(ii) Expense declared Common Expense by the provisions of this Declaration or the By-Laws.

(iii) Expense agreed upon as Common Expense by the Association and lawfully assessed against Owners of Lots in accordance with the By-Laws.

(iv) Any valid charge against the Association or against the Common Properties as a whole.

### ARTICLE THREE

#### GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of, and be enforceable by, The Association or any Owner, its and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration

is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the then Owners of two-thirds of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part, provided, however, that no such agreement to change shall be effective unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any Member or Owner, under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, Certified Mail - Return Receipt Requested, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Notice to any one of the Owners, if title to a Lot is held by more than one, shall constitute notice to all Owners of a Lot.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

#### ARTICLE FOUR

##### RESTRICTIONS ON USE AND RIGHTS OF THE ASSOCIATION AND OWNERS

(a) Permissible Uses. No Lot shall be used except for residential purposes, and no building of any type shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling which shall comply with any applicable zoning regulations; moreover, no Lot shall be used for access to any adjoining Lot or other property. A building may be constructed on a Lot and have a common party wall, or walls, with a building located on a contiguous Lot (thereby having a zero lot line setback); however, any such buildings must be permitted by applicable zoning, health and sanitation regulations. When construction of any building has once begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof.

(b) Utilities and Easements. All utility lines of every type, including but not limited to water, electricity, telephone, sewage and television cables, running from the main trunk line or service location to the house must be underground. The Developer reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric and telephone systems, wires, cables, and conduits for the purpose of bringing public services to The Properties, on, in or over ten (10) feet of each Lot line fronting on a street, ten (10) feet along the side lines of each Lot, and fifteen (15) feet along the rear line of each Lot, and such other areas as are shown on any recorded plats of The Properties; provided further, that the Association may cut, at its own expense, drainways for surface water wherever and whenever such action is required by applicable health or sanitation authorities in order to maintain reasonable standards of health, safety and appearance. In the event of any additions to The Properties, as provided in Article One, by the Developer, the easements created hereby shall exist on the Lots in such additional units. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

(c) Minimum Square Footage. In no event shall any building located on a Lot contain less than 1,000 square feet of "Living Area". No building shall be located on any Lot nearer to the front property line, side property line, or rear property line than the minimum building setback lines required by applicable zoning regulations or as shown on any recorded plat of The Properties. For purposes of this section, eaves, steps and porches without roofs shall not be construed to permit any portion of any building to encroach upon another Lot. Measurements shall be made to exterior walls.

(d) Temporary Structures. No structure of a temporary character shall be placed upon any portion of The Properties at any time, provided, however, that this prohibition shall not apply to shelters or huts used by contractors during the construction of a Living Unit on any Lot. Temporary shelters, tents, recreational vehicles, trailers (whether attached or unattached to the realty) may not, at any time, be used as a temporary or permanent residence or permitted to remain on any portion of The Properties.

(e) Garbage and Storage Receptacles. Each Owner shall provide receptacles for garbage, and all garbage receptacles, tools and equipment for use on the Lot of any Owner or otherwise, shall be placed in a fenced area in accordance with reasonable standards established by the Association to shield same from the general visibility from roads abutting the Lots. No fuel tanks or similar storage receptacles, other than solar panels and related storage facilities, may be exposed to view and such fuel tanks or similar storage receptacles may be installed only within the main dwelling house, or an accessory building, or buried underground.

(f) Debris. No leaves, trash, garbage or other similar debris shall be burned except as permitted by the appropriate governmental authority. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of The Properties, except as is temporary and incidental to the bona fide improvement of any portion of The Properties.

(g) Revisions of Lot Lines and Relocation of Roads. The boundary lines of any Lot or any Road shall not be changed subsequent to the recording of any plat thereof by the Developer in Dare County, North Carolina, without the written consent of the Association.

(h) Antennas. In the event a master antenna system is installed at The Properties, no television antennas, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any structure or any Lot or Common Properties within The Properties; provided, however, that the provisions of this paragraph shall not apply to the installation by the Association of equipment necessary for a CATV and mobile radio systems within The Properties.

(i) Sewage Disposal. Prior to the occupancy of any Living Unit located on The Properties, proper and suitable provisions shall be made by the Owner for the disposal of sewage by means of a septic tank or tanks constructed on such Lot, and in the case of any Lot facing on Currituck Sound, to the extent required by the appropriate public health authority, within any open space or buffer zone contiguous to and immediately East of State Road 1200, as same may be relocated, for disposal of all sewage. No sewage disposal system shall be used unless such system is designed, located, constructed and maintained in accordance with the requirements, standards and recommendations of the appropriate public health authority. Each septic tank and the nitrification field relating thereto shall be maintained in good condition so that its use and existence shall not constitute a nuisance to any other Owner.

(j) Trees and Foliage. Trees measuring three (3) inches or more in diameter, at a point two (2) feet above ground level, and any flowering trees or shrubs above five (5) feet in height may not be removed from The Properties without the written approval of the Association, unless located within ten (10) feet of a building, or site for such building, or driveways and walkways located or to be located on any Lot. Excepted herefrom shall be damaged trees or trees which must be removed because of an emergency.

(k) Unightly Conditions. -It is the responsibility of each Owner to prevent any unclean, unsightly, or unkept conditions of buildings or grounds on a Lot of any Owner which shall tend to substantially decrease the beauty of The Properties specifically and as a whole.

(l) No Offensive Activity. No noxious or offensive activity shall be carried on upon any portion of The Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner, tenant or guest thereof, in any portion of The Properties.

(m) Animals and Pets. Except as otherwise permitted herein, or in supplementary declarations hereto, no plants, animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of other Lots by any Owner, tenants and guests thereof, may be maintained. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

(n) Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows within The Properties is prohibited unless required for public safety.

(o) Docks, etc. No Owner of any Lot shall erect or maintain a private dock, dam or similar structure on any Common Properties, such as lakes, ponds, or waterways.

(p) Boats. No boat, canoe or water craft shall be operated upon any lake, pond or other waterway within The Properties if such boat, canoe or other water craft shall be propelled by an internal combustion engine or by any other form of motorized operation which may discharge liquids or gases into the water. No boat, canoe, or

other water craft shall be beached or stored over night on the shore of any lake, pond, or other waterway except within areas, if any, designated by the Association.

(q) Motorized Vehicles. All motorized vehicles operating within The Properties must be properly muffled so as to eliminate noise which might be offensive to others. Two and three wheel motorized vehicles as well as four wheel "go-cart" or "beach buggy" type vehicles are prohibited from being used or operated on or within the Common Properties or frontal dune systems.

(r) Signage. No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than two (2) feet square advertising the property for sale; and all other signs on any Lots must be approved in writing by the Association.

#### ARTICLE FIVE

##### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION AND BOARD OF DIRECTORS

Section 1. Membership. Every person or entity who is a record Owner of a fee simple interest in any Lot is subject by this Declaration to assessment by the Association and shall be a Member of the Association; provided, however, that any such person or entity to hold such interest merely as a security for the performance of an obligation shall not be a Member. The requirement of membership shall not apply to any mortgagee or trust beneficiary acquiring title by foreclosure or otherwise, pursuant to the mortgage or deed of trust instrument.

Section 2. Voting Rights. The Association shall have one class of voting membership, and Members shall be entitled to one vote for each Lot in which they hold an interest required for membership by Section 1 of this Article. When more than one person or entity holds such an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine and such persons shall designate one (1) person to vote for their Lot, but in no event shall more than one vote be cast with respect to any such Lot.

Section 3. Control of the Association and Board of Directors. The Existing Property contains thirty seven (37) Lots and the Developer presently contemplates adding to The Properties no more than fifty three (53) additional lots pursuant to a supplemental Declaration. Within three (3) years from the date of the first sale of a Lot by the Developer or when thirty percent (30%) of the Lots (being 30% of the total number of Lots platted and made subject to this Declaration by the Developer, prior to the sale of 30% of the Lots platted in the Existing Property and within three (3) years



from the date of the first sale of a Lot) have been sold by the Developer, whichever occurs first, the voting rights of the Developer, by virtue of Lots owned by the Developer subsequent to the earlier of the two mentioned events, shall not be greater than one-half of the total votes outstanding in membership, and a majority of the Board shall be composed of Owners other than the Developer or representatives of the Developer.

## ARTICLE SIX

### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Properties. The Developer may retain the legal title to the Common Properties until such time as it has completed improvements, if any, thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provision to the contrary herein, the Developer hereby covenants, for itself, its successors and assigns, that it shall convey the Common Properties to the Association not later than three (3) years from the date of the first sale of a Lot by the Developer or when thirty percent (30%) of the Lots, as defined in Section 3 of Article Five, are sold by the Developer, whichever occurs first.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created herein shall be subject to the following:

(a) The right of the Owners of any Lot located on Currituck Sound to locate, to the extent required by the appropriate public health authority, within any open space (Common Properties), immediately contiguous to the East right of way line of North Carolina State Road 1200 (subject to any relocation thereof), septic tanks and nitrification fields for the purpose of providing sewage and waste disposal for any building located on any Lot within The Properties contiguous to Currituck Sound (the "Sound Lots"). The Owner of any Sound Lot shall be solely responsible for the installation, repair, maintenance and replacement of any septic tank or nitrification field ("sewage system") installed by the Owner of any Sound Lot. Upon the failure of the Owner of any Sound Lot to properly maintain and repair the sewage system installed by such Owner, the Association shall have the right to maintain or repair, or cause to

be maintained or repaired, the sewage system, so that such system shall be maintained in accordance with the requirements, standards and recommendations of the appropriate public health authority; moreover, the cost of so repairing and maintaining the sewage system shall be the sole obligation of the Owner, or Owners, of the Sound Lot which such sewage system services and, to the extent any such repair or maintenance is performed by the Association, the cost thereof shall be assessed against the Owner of such Lot.

(b) The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any Owner for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of any published rules and regulations; and

(c) The right of the Association to dedicate or transfer all or any part of the Common Properties (which includes streets and roads) to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast fifty-one percent (51%) of the votes, has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken; and unless any such dedication or transfer is subject to any rights of the Owners of any Sound Lots with respect to the use, repair, maintenance and replacement of any sewage system within the boundaries of the open space contiguous to the East right of way line of North Carolina State Highway 1200; and

(d) The rights of Members of the Association shall in no wise be altered or restricted because of the location of the Common Properties in an additional unit of Developer in which such Member is not a resident. Common Properties belonging to the Association shall result in membership entitlement, notwithstanding that the Lot acquired, which results in membership rights as herein provided, is not located within any property made subject to, in whole or in part, this Declaration which contains any Common Properties.

#### ARTICLE SEVEN

##### COVENANT FOR PAYMENT OF ASSESSMENTS

##### Section 1. Creation of the Lien and Personal Obligation for Assessments.

The Developer, for each Lot owned by him 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 any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such annual and special assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such 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 Lot against which each such assessment is made. To the extent that the Association incurs any costs in the repair and maintenance of any sewage system servicing any Sound Lot, such cost shall be assessed against the Owner of the Sound Lot serviced by such sewage system. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be exclusively for the purpose of promoting the health, enjoyment, safety or welfare of the residents in The Properties and in particular for the improvement and maintenance of properties and facilities devoted to the purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon The Properties, including, but not limited to, the payment of taxes and insurance on the Common Properties and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, and for maintenance of dedicated roads within The Properties until the maintenance of such roads has been assumed by any public authority, all of which shall be Common Expenses as detailed in the By-Laws.

Section 3. Basis and Maximum of Annual Assessments.

(a) Commencing with the calendar year beginning January, 1978, and until the calendar year beginning January, 1979, the annual assessment shall be \$100.00 per calendar year (or a pro rata amount for any Owner who owns any Lot for less than a calendar year), for each Lot owned by any person(s) or entity(ies) including the Developer.

(b) Commencing with the calendar year beginning January, 1979, and each year thereafter, the assessment applicable to each Lot, including any Lots owned by the Developer, to be paid by each Owner to the Association shall be the total funds needed for the Common Expenses of the Association, as established by the Board,

divided by the number of platted Lots in The Properties.

The total assessment payable by an Owner may be divided into such installments as the Board shall deem appropriate, but until notice from the Board to the contrary is received the Owner of each Lot shall pay his or its proportionate share as herein determined on an annual basis, in advance, on the first day of January of each year (after 1978) after notice, as to the amount of the annual assessment due by any Owner, is received by any such Owner from the Board.

(c) Subject to the provisions of Section 5 of this Article Six, the maximum annual assessment per Lot assessed pursuant to Section 3(b) of this Article Six shall not exceed \$150.00 per calendar year.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repairs or replacement of any capital improvement (including, without limiting the generality thereof, any lake, waterway, or pond) located upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of all the Members at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum Amount of Annual Assessments. Subject to the limitations of Section 3 hereof and for the periods therein specified, the Association may change the maximum amount and basis of the assessments fixed by Section 3 hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting; provided further, that the limitations of Section 3 hereof shall not apply to any change in the maximum amount and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article One, Section 2 of this Declaration.

Section 6. Quorum for any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 of this Article

shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 of this Article, the presence at the meeting of Members, or of proxies, entitled to cast a majority of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5 of this Article, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding scheduled meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates.

The annual assessments provided for in Section 3(a) of this Article shall commence on the first day of the month next succeeding the month any Owner, other than the Developer, acquires title to a Lot, and shall be levied for the balance remaining in the calendar year in an amount which bears the same relationship to the annual assessment provided for in Section 3(a) hereof as the remaining number of months in that calendar year bear to twelve. The annual assessment provided for in Section 3(b) of this Article shall commence on January 1, 1979, and such assessment shall constitute the first annual assessments which shall be for the balance of the calendar year and shall become due and payable on an annual basis, in advance, on the first day of the next succeeding month, after notice, as to the amount of the annual assessment due by any Owner, is received by an Owner from the Board. The assessments for any year after the first year shall become due and payable, upon fifteen (15) days notice from the Board, as to the amount of such annual assessment, on the first day of January of each year.

The first assessment levied against any additional unit which is hereafter added to The Properties, now subject to assessment, at a time other than the beginning of any assessment period, shall be an amount which bears the same relationship to the annual assessment provided for in Section 3(a) or Section 3(b), whichever is applicable, of this Article as the remaining number of months in that year bear to twelve.

The due date of any special assessment under Section 4 hereof or any assessment against any particular Lot, or Lots, permitted by this Declaration shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. Commencing with the first annual assessment (with 1979 calendar year), the board of Directors of the

Association shall fix the date of commencement, and the amount of the assessment against each Lot, for each assessment period at least fifteen (15) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the Office of the Association, or at any other place designated by the Board upon notice to the Members, and shall be open to inspection by any Owner. Written notice of the assessment thereupon shall be sent to every Owner subject thereto.

The Association shall, upon demand, furnish at any time to any Owner liable for said assessment, a certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien, Remedies of Association. If the assessments are not paid on the date due (being the dates specified in Section 7 of this Article), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot, or Lots, which shall bind such Lot, or Lots, in the hands of the then-Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then-Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of interest set by the Board, not to exceed the maximum rate permitted by law and the Association may bring appropriate civil action against the Owner personally obligated to pay the same or to foreclose the lien against any such Lot, or Lots, and there shall be added to the amount of such assessment, the costs of such action and reasonable attorney's fee or other cost incurred by the Association. In the event a judgment is obtained against any Owner for such assessments, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the cost of the action.

Section 10. Subordination of the Lien to Mortgages or Deeds of Trust. The lien of the assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Lot,

or Lots, subject to assessment. The subordination shall not relieve any Lot, or Lots, from liability for any assessments now or hereafter due and payable, but the lien thereby created shall be secondary and subordinate to any first mortgage or deed of trust as if said lien were a second mortgage, irrespective of when such first mortgage or deed of trust was executed and recorded.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all Common Properties as defined in Article Two hereof; and (b) all properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption. Homestead exemption shall not be considered an exemption.

Notwithstanding any provisions of this Section 11, no Lot or any Living Unit located thereon shall be exempt from said assessments, charges or liens.

#### ARTICLE EIGHT

##### EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance. In addition to maintenance on the Common Properties and after thirty (30) days written notice to any Owner which shall specify the required maintenance, the Association shall have the right but not the obligation to provide (a) maintenance upon vacant Lots and (b) maintenance upon every improved Lot which is subject to assessment under Article Seven hereof. Such maintenance may include paint, repair, replace and care of roofs, gutters, downspouts, exterior improvements. Such maintenance as to a vacant Lot may include the mowing of grass and weeds, the trimming of shrubs, or the removal of trash and litter.

Section 2. Assessment of Cost. The cost of any such maintenance shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such Lot is subject, and, as part of such annual assessment or charge, it shall be a lien against any such Lot, or Lots, as heretofore defined and limited, and a personal obligation of the Owner, and shall become due and payable in all respects as provided herein.

#### ARTICLE NINE

##### AMENDMENT OF DECLARATION

Until three (3) years from the date of the first sale of a Lot by the Developer or when thirty percent (30%) of all the Lots, as defined hereinabove, are sold by the Developer, whichever occurs first, this Declaration may be amended by a

majority vote of the Owners, including the Developer, and the written consent of the holders of any first mortgages or deeds of trust against any portion of The Properties. Thereafter, this Declaration may be amended only after notice to all Owners and holders of first mortgages or deeds of trust, by the affirmative vote of two-thirds (2/3) of the Owners (the voting rights of the Developer, as an Owner, subsequent to the earlier of the two above mentioned events, shall not be greater than one-half of the total votes outstanding in membership) and the written consent of the holders of first mortgages or deeds of trust encumbering fifty-one percent (51%) of the Lots subject thereto. If any amendment to the Declaration creates an inconsistency in the By-Laws, to the extent such inconsistency exists, the Declaration shall control. No amendment to this Declaration shall be effective until recorded in the Office of the Register of Deeds of Dare County, North Carolina.

ARTICLE TEN

CAPTIONS, INTRODUCTIONS AND GENDER

The captions and introductory material herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof. The use of masculine gender in this Declaration shall be deemed to refer to the feminine and neuter genders, and the use of the singular shall be deemed to refer to the plural, and the use of the plural shall be deemed to include the singular, whenever the context so requires.

DEVELOPER:

VENTURE MANAGEMENT INCORPORATED

By:

John C. Whitaker Jr.  
President



Betsy M. Linnell  
Asst. Secretary





SCHEDULE A

Lying and being in Atlantic Township, Dare County, North Carolina, and beginning at a point in the mean high water line of the western edge of the Atlantic Ocean in the north line of Eleanor D. Scharff (now or formerly) and being the southeast corner of the property described in Book 207 at page 499 in the Office of the Register of Deeds of Dare County, North Carolina; and running thence with the north line of said Scharff South  $86^{\circ} 28' 10''$  West 1710 feet, more or less, to a point in the east right of way line of State Road 1200 (as presently claimed by the State of North Carolina); running thence with said right of way North  $14^{\circ} 19' 05''$  West 407.15 feet to the point of tangent of a curve to the right leading to Oyster Catcher Lane, and continuing with said right of way line of State Road 1200 and the western terminus of Oyster Catcher Lane North  $14^{\circ} 19' 05''$  West 120.02 feet to the point of tangent of a curve to the left leading eastwardly from said State Road 1200 and being the western terminus of the north right of way line of Oyster Catcher Lane; running thence with said right of way line of Oyster Catcher Lane, as shown on the hereinafter mentioned map, the four following distances: (1) on a curve to the left in an eastwardly direction 30.66 feet, (2) eastwardly 75.44 feet, (3) eastwardly 52.29 feet, the point of tangent of a curve to the left into an unnamed street, and (4) northeastwardly on a curve to the left 29.82 feet to a point; running thence with the west right of way line of an unnamed street leading north from Oyster Catcher Lane North 44.84 feet to a point; running thence due east 250 feet to a point; thence North  $5^{\circ} 00' 9''$  East 68.82 feet to a point, thence North  $59^{\circ} 58' 54''$  East 51.97 feet to a point, thence South  $89^{\circ} 17' 02''$  East 80 feet to a point, thence South  $87^{\circ} 51' 09''$  East 80.06 feet to a point, thence South  $85^{\circ} 54' 52''$  East 70.18 feet to a point, thence North  $35^{\circ} 40' 40''$  East 86.25 feet to a point, thence North  $82^{\circ} 06' 42''$  East 33.79 feet to a point, thence North  $76^{\circ} 07' 24''$  East 77.9 feet to a point; thence South  $15^{\circ} 04' 20''$  East 106.92 feet to a point; thence North  $66^{\circ} 41' 09''$  East 202.09 feet to a point in the west right of way line of Skimmer Way; thence crossing Skimmer Way North  $66^{\circ} 41' 09''$  East 60.63 feet to a point in the east right of way line of Skimmer Way; running thence with said right of way line of Skimmer Way in a southeastwardly direction 69.08 feet to a point; running thence North  $66^{\circ} 41' 09''$  East 342.99 feet to a point in the mean high water line of the western edge of the Atlantic Ocean; running thence in a southeastwardly direction with the mean high water line of the western edge of the Atlantic Ocean a chord distance of 732.29 feet to the point and place of Beginning. The foregoing description was taken from a plat of survey prepared by Quibble and Associates Incorporated, Consulting Engineers and Land Surveyors, Chase City, Virginia, dated May 18, 1977 and entitled "SANDERLING PHASE I, Lots 1 through 37, Dare County - Atlantic Township - N.C."