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Currituck County, NC
Charlene Y Dowdy Register of Deeds
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Prepared by and return to:
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P.O. Box 1042
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AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

The Currituck Club

This Amendment to Declaration of Covenants, Conditions and Restrictions made as of this 15th day of September, 2004 by the Currituck Associates-Residential Partnership, a North Carolina general partnership (hereinafter referred to as the "Declarant").

RECITALS

A. The Declarant is the developer of The Currituck Club which development has been governed by that Declaration of Covenants and Restrictions of August 31, 1995 recorded in Book 369 at Page 780 of the Public Registry of Currituck County, North Carolina as amended by supplementary filings in Book 377, at Page 281, Book 381 at Page 468; Book 388 at Page 569; Book 396 at Page 639; Book 412 at Page 378; Book 416 at Page 807; Book 501 at Page 148; Book 586 at Page 228; and Book 620 at Page 923 the initial declaration and all supplementary filings hereinafter referred to as the "Declaration".

B. That pursuant to its responsibility as developer, Declarant has maintained an active role in all aspects of the development and has provided stewardship and management for all properties in The Currituck Club, which role is acknowledged by The Currituck Club Property Owners' Association, Inc. (the "Association") as having been instrumental to achieving and maintaining the high

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quality and the architectural integrity of the community through architectural controls and guidelines and resulting in appreciation of property values; and further that the Declarant has taken an active participation with the Association to ensure fiscal responsibility and the development of policies to promote a quality of life experience within The Currituck Club.

C. The Declarant's role and ability to make contributions to the development of The Currituck Club has been enabled by certain provisions of the Declaration, including but not limited to: Permissible Uses in Article Five, Section 1; Regulation of Signage in Article Five, Section 18; Voting Rights in Article Six, Section 2(b) and Title to Common Properties in Article Seven, Section 2, said enabling provisions and related powers and duties delegated to the Declarant within the Declaration hereinafter referred to the "Declarant Rights".

D. That the Board of Directors of the Association believed it to be in the best interest of the Association for the Declarant to retain a significant role within The Currituck Club and in furtherance thereof, a special meeting of the Association was held on June 1, 2004 to consider amendments to the Declaration proposed by the Bylaws Review Committee of the Association at which meeting the following amendments to the Declaration as hereinafter stated were approved by a vote of 859 to 1.

NOW, THEREFORE, the Declaration is amended and restated as follows:

1. ARTICLE FOUR: ARCHITECTURAL CONTROL,
Section 2.

The following language within the second sentence of Article Four, Section 2 is deleted:

... provided that the Committee shall not refuse to approve any plans which are substantially similar to any other plans and specifications which previously have been approved for any Dwelling Unit.

Article Four, Section 2 is hereby amended and restated as follows:

Section 2. Architectural Control. Unless expressly authorized in writing by the Architectural Control Committee (the "Committee"), no Dwelling Unit, fence, wall, driveway, patio, building or other structure or improvement whatsoever may be constructed, nor any exterior addition or alteration to any Dwelling Unit, fence, wall, driveway, patio, building or other structure or improvement be started, nor any clearing or site work shall be commenced, or maintained upon any Lot, Other Lot or

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Other Residential Unit in the Properties, until plans and specifications therefor showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, driveway, parking, decorative landscape planting, floor plans and elevations therefor (all of which is hereinafter referred to collectively as the "Plans"), shall have been submitted in triplicate to, and approved in writing, as to harmony of external design and location in relation to any surrounding structures, natural features and topography, by the Committee. The Committee shall have the absolute and exclusive right to refuse to approve any such Plans which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons, which in the sole and uncontrolled discretion of the Committee shall be deemed sufficient. In no event will the Committee approve any Plans in which the Dwelling Unit at the highest point of its roof exceeds 40 feet in height, measured from the finished grade or original grade, whichever grade is lower. The Committee, in the exercise of its discretion, shall not approve the location of a Dwelling Unit or garage or carport on any Lot intended for use as a site for a single family detached dwelling within 25 feet of the front line of such Lot, within 15 feet of the side lines of such Lot, and within 25 feet of the rear line of such lot. For purposes of this Section 2, a single family detached dwelling does not include a patio home or zero lot line home. Notwithstanding the application of these setbacks, the Committee shall have complete authority to determine the appropriate building site and location for the Dwelling Unit on each and every Lot.

2. **ARTICLE FOUR: ARCHITECTURAL CONTROL,**

Section 3. Architectural Control Committee.

The third sentence of the second paragraph in Article Four, Section 3 subsection (b) is deleted and the second paragraph is amended and restated as follows:

Approval shall be subject to such regulations and architectural standards as may from time to time be promulgated by the Committee. Within thirty (30) days after receipt of the Plans and all other required information, the Committee shall notify the Owner of the Lot or Dwelling Unit in writing as to whether the Plans and the contractor have been approved. The response of the Association may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the thirty (30) day time period for further Committee response shall only commence upon receipt of the requested additional information. If approval with conditions is granted, and construction then begins, the conditions shall be deemed accepted by the Owner of the Lot or Dwelling Unit and the conditions imposed shall become fully a part of the approved Plans.

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3. **ARTICLE FIVE: RESTRICTIONS ON USE AND RIGHTS OF THE ASSOCIATION, DECLARANT AND OWNERS. Section 8 Garbage and Storage Receptacles.**

In Section 8, the word "propane" is deleted from the second sentence and Section 8 Garbage and Storage Receptacles is hereby amended and restated as follows:

Section 8 Garbage and Storage Receptacles. Except as required by any appropriate governmental authority, each Owner shall provide receptacles for garbage (and recyclables, if such a program is in place in Currituck County), and all garbage receptacles, tools and equipment for use on a Lot or Dwelling Unit by any Owner, shall be placed in a screened area in accordance with reasonable standards established by the Committee to shield same from general visibility from roads and neighbors abutting the Lot or Dwelling Unit. No fuel tanks or similar storage receptacles or related storage facilities, may be exposed to view. No underground storage tanks for natural gas, chemicals, petroleum products or any other mineral or toxic product will be allowed anywhere in the Properties. Propane tanks may be either above ground or buried in accordance with the then-current Currituck County regulations. No tank may be exposed to view.

4. **ARTICLE FIVE: RESTRICTIONS ON USE AND RIGHTS OF THE ASSOCIATION, DECLARANT AND OWNERS, Section 12 Trees and Foliage.**

Section 12 of Article Five is hereby amended and restated as follows:

Section 12. 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 about five (5) feet in height may not be removed from the Properties without the written approval of the Committee, unless located within ten (10) feet of a Dwelling Unit, or site for such Dwelling Unit, or in the path of driveways and walkways located or to be located on any Lot. Excepted here from shall be damaged trees or trees which must be removed because of an emergency. The removal of any such unapproved tree or shrub, without permission from the Committee, shall require replacement in kind and be paid for by the Property Owner responsible for the violation. In the event that the tree or shrub cannot be replaced in kind (i.e. the tree or shrub that has been removed without authorization was larger than feasible to replace or is unavailable in the trade) then, in that event, the responsible Property Owner may be assessed by unanimous vote of the Board a fine up to Five Hundred Dollars (\$500.00) for each violation, each tree or shrub being a separate violation.

5. ARTICLE FIVE: RESTRICTIONS ON USE AND RIGHTS OF THE ASSOCIATION, DECLARANT AND OWNERS, Section 13. Unsightly Conditions.

Article Five, Section 13 is amended to substitute "Board" for "Association" and is hereby amended and restated as follows:

Section 13. Unsightly Conditions. It is the responsibility of each Owner to prevent any unclean, unsightly or un-kept conditions to exist on his Lot, Dwelling Unit, or grounds which shall tend to decrease the beauty of the Properties, specifically or as a whole. During the construction of any improvement to a Lot in the Properties, the Lot, roads, bike paths landscaping and Common Areas adjacent thereto shall be kept in a neat and orderly condition so as not to cause an unsightly condition to exist or damage to occur. In the event the Owner or his agent or employee (including, without limitation, any contractor or subcontractor) shall fail to maintain the Lot and adjoining areas as specified herein to or allow damage to occur and such failure continues or damage remains un-repaired for seven (7) days following the delivery of written notice thereof from Declarant or the Board, Declarant or the Board shall have the right, exercisable in its sole discretion to summarily abate any unsightliness, make needed repairs and to remove any rubbish, refuse, unsightly debris and/or growths from the Lot and adjoining area. In the event the Declarant or the Board, after such notice, causes the subject work to be done, the costs of such shall be reimbursed by the Owner to the Declarant or the Board and will become a continuing lien on the Lot until paid.

6. ARTICLE SIX: MEMBERSHIP, VOTING RIGHTS IN THE ASSOCIATION, RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION, Section 2, Voting Rights, subsection (b), Class II.

Article Six, Section 2, subsection (b) Class II is hereby amended and restated as follows:

- (i) Declarant has sold and closed the sale of all lots within the Properties; or
- (ii) December 31, 2011.

7. ARTICLE SEVEN: PROPERTY RIGHTS IN THE COMMON PROPERTIES, Section 2 Title to Common Properties.

Article Seven, Section 2 is hereby amended and restated as follows:

Section 2. Title to Common Properties. The Declarant may retain the legal title to any Common Properties shown on any recorded plat of the Properties, until such times as it has completed improvements, if any, thereon and until such times as Declarant so wishes and/or, in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision to the contrary herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey, and upon such conveyance the Association shall except, any such Common Properties to the Association not later than December 31, 2011.

8. ARTICLE SEVEN: PROPERTY RIGHTS IN THE COMMON PROPERTIES, Section 3 Extent of Member's Easements, subsection (b):

Article Seven, Section 3 is hereby amended and restated as follows:

(b) The right of the Association as provided in its Articles of Incorporation or Bylaws, to suspend the enjoyment rights of any Member (or his guest or tenant) for any period during which any assessment of that Member remains unpaid, and for any period any infraction of any published rules and regulations adopted by the Board remains unresolved.

9. ARTICLE TEN: RECREATIONAL FACILITIES.

The second paragraph of Article Ten Recreational Facilities is hereby amended and restated as follows:

The Declarant may (but shall not be obligated to) construct other recreational amenities (including without limitation additional tennis court(s), pool(s), walking trails, bike paths or open space) in any areas shown as either "Common Area" or "Present Recreational Facilities" on any recorded plat of the Properties.

10. ARTICLE ELEVEN: AMENDMENT TO DECLARATION, Section 1, Owner/Member initiated.

The second paragraph of Article Eleven Section 1 is hereby amended and restated as follows:

There shall not be allowed any Owner/Member-initiated amendment to this Declaration for a period of five (5) years from the effective date hereof, and in

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addition, no Owner/Member-initiated amendments may ever be made to Articles 13 or 14 without consent of the then-owner of The Currituck Club Golf Course, and no Owner/Member-initiated amendments may be made for any reason to Article Five, Sections 1-29, Article Eight, Section 13; and Article Twelve, prior to December 31, 2011, without the Declarant's prior approval. The above limitations shall in no way limit or diminish Declarant's rights to make amendments to any part of the Declaration under the powers reserved in Section 2. below.

11. **Ratification.** Except as amended herein, all covenants, conditions and restrictions of the Declaration are expressly ratified, affirmed and shall remain in full force and effect.

12. **Authority.** This Amendment has been adopted by a majority of the membership of the Association, the record of said vote being on file with the Secretary of the Association.

IN WITNESS WHEREOF, the Declarant by authority granted herein, has caused this Amendment to be duly executed under seal the day and year below subscribed.

DECLARANT:

THE CURRITUCK ASSOCIATES – RESIDENTIAL PARTNERSHIP, a North Carolina general partnership

By: BODDIE-NOELL ENTERPRISES, INC., (SEAL)
A North Carolina corporation, General Partner

By: Charles J. Hayes, Jr. (SEAL)
Charles J. Hayes, Jr.,
Attorney-in-Fact

NORTH CAROLINA
CURRITUCK COUNTY

I, Diana B. Wise, a Notary Public for said County and State, do hereby certify that Charles J. Hayes, Jr., personally appeared before me this day, and acknowledged that he is Attorney-in-Fact for Boddie-Noell Enterprises, Inc., a North Carolina corporation, the managing general partner of The Currituck Associates-Residential Partnership, and that by authority duly given and as the act of the corporation in its capacity as general partner of said partnership, he executed the

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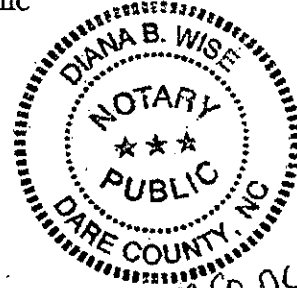
foregoing and annexed instrument, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Currituck, State of North Carolina, on the 21st day of July 1993, in Book 321, Page 552, and that this instrument granting him power of attorney.

I do further certify that said Charles J. Hayes, Jr., acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and on behalf of the said Boddie-Noell Enterprises, Inc. acting as managing general partner of the Currituck Associates-Residential Partnership, a North Carolina general partnership.

Witness my hand and official seal, this 29th day of September, 2004.

Diana B. Wise
Notary Public

My commission expires: MAY 17, 2007



NORTH CAROLINA
CURRITUCK COUNTY

The foregoing certificate of Diana B. Wise - Notary of Dare Co, NC is certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.

Charlene G. Dwyer
Register of Deeds

By Emily H. Castelow
Asst. Register of Deeds
Deputy

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