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AMENDMENT TO DECLARATION (HATTERAS LANDING)

Prepared by and return to Robert B. Hobbs, Jr., Attorney
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Post Office Box 310
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NORTH CAROLINA
DARE COUNTY

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Hatteras Landing (this "Declaration"), is made and entered into on this 2 day of April, 2012, by HATTERAS LANDING HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation (hereinafter referred to as the "Association").

RECITALS

The Paley-Midgett Company, LLC (the "Declarant") previously recorded a Declaration of Covenants, Conditions and Restrictions for Hatteras Landing (the "Community"), dated July 11, 1997 and recorded in Book 1123, Page 589, Dare County Registry (the "Initial Declaration").

Declarant has completed the development of the Community and the Properties, and has withdrawn from the control and participation in the Community and the Properties. As a result and pursuant to the Declaration, the Association is the de facto assignee and successor in interest of all of Declarant's rights under the Initial Declaration. The Association is the entity charged with the powers of maintaining and administering the Common Properties and facilities and with administering and enforcing the covenants, conditions and restrictions of, and collecting and disbursing the assessments and charges created by, the Initial Declaration.

The annual meeting of the Members of the Association (being the Owners of Homesites constituting the Properties) was held, after due notice and with a quorum present, on March 31, 2012, and at such meeting more than sixty-seven percent (67%) of the votes in the Association



consented to cause the Community and the Properties to be brought under the jurisdiction and regulation of the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes, and to adopt certain amendments to (1) the Aesthetics Guidelines as set forth on the attached Exhibit A, (2) the Bylaws as set forth on the attached Exhibit B, and (3) the Initial Declaration hereinafter set forth, as required by and pursuant to Section 47F-2-117(a) of the North Carolina Planned Community Act (the "Act").

NOW, THEREFORE, in accordance with the provisions of Section 47F-2-117(a) of the Act, the Association does hereby make and approve the following amended and restated Declaration, and does hereby declare that all of the Community shall be held, transferred, conveyed, occupied and used subject to the following easements, covenants, conditions, restrictions, liens and charges which shall run with the title to the real property and which shall be binding upon and inure to the benefit of all of the parties having any right, title or interest in the above described properties, their heirs, successors and assigns.

ARTICLE ONE DEFINITIONS

In addition to and supplementing the definitions contained in Section 47F-1-103 of the Act, the following words when used in this Declaration or any amended or Supplemental Declaration (unless the context requires otherwise) shall have the following meanings:

"Assessment(s)" or "assessment(s)" or "Common Charges" shall mean and refer to the assessment(s) and charges levied by the Association against Members who are the Owners of homesites in the Properties and the words Assessment(s) or assessment(s) shall have the same meaning as Common Charges, unless the context requires otherwise.

"Bylaws" shall mean and refer to the Bylaws of the Association and all amendments thereto. A copy of the currently-approved Bylaws is attached at Exhibit B.

"Board" shall mean and refer to the Board of Directors of the Association.

"Common Properties" or "Common Elements" shall mean and refer to those areas of land shown on any recorded plat of the Properties and labeled as "Common Properties" or shown as Recreational Facilities, open space, beach access, streets, roads or pedestrian walking areas (together with all improvements located thereon) which are a part of the Properties, and as such are intended to be devoted to the common use and enjoyment of the Members, subject to special use rights and limitations, if any, granted to or imposed on Owners of particular Homesites, and subject to the use rights of owners of units in The Villas of Hatteras Landing Condominium, and others who have been granted a legal right to the use of the walkways, gazebo, sound and ocean access areas. "Common Properties" shall have the same meaning as "Common Elements" as defined in Section 47F-1-103(4) of the Act.

"Dwelling Unit" shall mean any residential structure together with any approved appurtenances located on any Homesite.

"Facilities" shall mean streets, drives, lanes, footways, open spaces, landscaping, entrances, drainage facilities, access easements, and any common facilities for the benefit of the Community shown on any recorded plats of the Community or any part thereof.

"Governing Documents" is a collective term referring to this Declaration and any applicable Supplemental Declarations, Amendments to Declaration, the Bylaws, the Articles, the Aesthetics Guidelines, any rules and regulations, and Board resolutions, relating to the Community, all as they may be amended.

"Hatteras Landing" shall mean and refer to the "Community" or the "Properties," which is further described as (1) the Common Properties and (2) the following:

Phase One of Hatteras Landing, Residential Oceanfront Homesites 2 through 7, as shown on plat recorded in Plat Cabinet C, Slide 191 D, Dare County Registry;

Phase Two, Hatteras Landing, Residential Oceanfront and Oceanside Homesites 8 through 22, as shown on plat recorded in Plat Cabinet D, Slide 118, Dare County Registry; and

Phase One, Soundfront Homesites 1 through 8, and Harbor Villa Homesites HV-4 through HV-11, as shown on the plat filed in Plat Cabinet D, Slide 310, Dare County Registry;

along with and including any Homesites shown on subsequently-recorded plats for purposes of correction, amendment, recombination and the like.

"Homesite" or "Lot" shall mean and refer to any unimproved parcel of land within The Properties which is intended for use as a site for a single family detached dwelling as shown upon any recorded subdivision map of any part of the Properties, with the exception of Common Properties or Limited Common Properties. A parcel of land shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved property, i.e., a Dwelling Unit. "Homesite" and "Lot" shall also have the same meaning as "Lot" as defined in Section 47F-1-103(19) of the Act.

"Improvement" shall mean any structure, Dwelling Unit, fence, wall, driveway, patio, building, bulkhead, pier, swimming pool, other recreational amenities, and any other structure or improvement whatsoever, and any modification, alteration, repair or replacement of the same.

"Limited Common Expenses" shall mean common expenses allocated solely to Limited Common Properties to be paid by Owners of those Homesites benefited by such Limited Common Properties.

"Limited Common Properties" or "Limited Common Areas" or "Limited Common Elements" shall mean and refer to those areas of land (including without limitation any joint driveways) and Improvements (including without limitation any common entrances to a Dwelling Unit) shown on or designated as Limited Common Properties or Limited Common Areas on any

recorded subdivision map of the Properties, and intended for the use of the Owners of particular Homesites or Dwelling Units to the exclusion of other Owners and other Members. Any property so designated shall be for the exclusive use of the Owners of the Dwelling Units or the Homesites so designated on the recorded plats, and the expenses of administration, operation, maintenance, repair or replacement of those Limited Common Properties or Limited Common Areas shall be assessed against those Homesites or Dwelling Units having the exclusive or special rights in the use or enjoyment thereof. "Limited Common Properties" and "Limited Common Areas" shall also have the same meaning as "Limited Common Elements" as defined in Section 47F-1-103(18) of the Act.

"Living Area" shall mean and refer to those heated and/or air-conditioned areas within a Dwelling Unit which shall not include garages, carports, porches, patios, breezeways, terraces, or basements.

"Member" shall mean a member of the Association and shall refer to all homesite Owners in the Properties.

"Mortgage" means a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Homesite. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Occupant" shall mean any person including, without limitation, any Owner, family member, guest, invitee, lessee, or tenant of an Owner occupying or otherwise using a Dwelling Unit within the Community.

"Ocean Access" shall mean and refer to that pedestrian access way area lying between Homesites 15 and 16 of Phase Two, Hatteras Landing, which provides access from South Beach Court to the lands of the United States of America comprising a portion of the Cape Hatteras National Seashore.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Homesite or Dwelling Unit situated upon the Properties, but notwithstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any secured noteholder or trust beneficiary unless and until such secured noteholder or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. The words "Member" and "Owner" are meant to describe all Hatteras Landing owners interchangeably as semantics dictate throughout this Declaration. "Owner" shall also have the same meaning as "Lot Owner" as defined in Section 47F-1-103(20) of the Act.

"Plans" shall mean plans and specifications for the Proposed Work showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, driveway, parking, decorative landscape planting, floor plans and elevations of each level of the proposed or existing structure or Improvement.

"Proposed Work" shall mean the proposed Improvement or other work shown on the Plans submitted by the Owner to the ARC for review.

ARTICLE TWO GENERAL PROVISIONS

Section 1. Planned Community Act. The North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes, as amended from time to time (the "Act"), shall be applicable in its entirety to the Community. If any provision or procedure of the Declaration or Bylaws, as amended, is in conflict or inconsistent with any provision or procedure of the Act, the provision or procedure of the Act shall control, except to the extent the Act allows the Declaration or Bylaws to vary the provisions of the Act, in which case the provision of the Declaration or Bylaws, as the case may be, shall control.

Section 2. 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, in perpetuity.

Section 3. Notices.

(a) Unless expressly provided to the contrary by the Act, notices required under this Declaration shall be in writing and shall be either:

- (i) hand-delivered, in which case notice will be deemed to have been given upon receipt, or
- (ii) mailed prepaid by United States mail or by a commercial overnight mail service to the mailing address (in the case of postal mail) or physical address (in the case of commercial overnight mail service) of the intended recipient, such address being the address on file with the sender or the address designated by the recipient in writing, in which case notice will be deemed to have been given when sent, or

(iii) sent by facsimile to a facsimile phone number of the recipient on file with the sender, in which case notice will be deemed to have been given when sent, or

(iv) sent by any other electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the recipient, in which case notice will be deemed to have been given when sent.

(b) Each party hereto shall be responsible for notifying the other of any change in its address within fifteen (15) days of such change.

(c) All notices to the Association shall be hand-delivered or mailed to the Association's mailing address stated in either the Association's correspondence or publications, or in the corporate records of the North Carolina Secretary of State.

(d) If any date upon which action is required under this Declaration shall be a Saturday, Sunday or legal holiday, the date for such action shall be extended to the first regular business day after such date which is not a Saturday, Sunday or legal holiday.

Section 4. Enforcement.

(a) Every Owner and Occupant shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with procedures set forth in the Bylaws.

(b) In addition to those remedies provided to the Association by the Act, such sanctions may include, without limitation:

(i) pursuant to and in accordance with Section 47F-3-102(12) of the Act, imposing reasonable monetary fines which shall constitute a lien upon the violator's Homesite or Dwelling Unit. (In the event that any Occupant, guest or invitee of a Dwelling Unit or Homesite violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use any Facilities within the Common Elements;

(iv) suspending any services provided by the Association to an Owner or the Owner's Dwelling Unit or Homesite if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(vi) requiring an Owner, at its own expense, to remove any structure or Improvement on such Owner's Dwelling Unit or Homesite in violation of the Governing Documents and to restore the Dwelling Unit or Homesite to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Governing Documents from continuing or performing any further activities in the Community; and

(viii) levying special assessments to cover costs incurred by the Association to bring a Dwelling Unit or Homesite into compliance with the Governing Documents.

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(c) In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with any procedures established by the Board:

(i) The Association may exercise self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations), and entry onto any Unit for such purpose shall not be considered a trespass; and

(ii) The Association may bring suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(d) In addition to any other enforcement rights, if an Owner fails to perform properly such Owner's maintenance responsibility after written notice specifying the maintenance required and a reasonable opportunity to perform such maintenance, the Association may (but is not required to) record in the Dare County Registry a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Dwelling Unit or Homesite and the Owner as a special assessment.

(e) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(f) The decision to have the Association pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

(g) A decision by the Board not to take action to impose a sanction or take action to enforce the Governing Documents shall not be construed to be a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude

the Association from enforcing any other covenant, restriction or rule, nor shall it preclude any Owner from taking action at law or in equity to enforce the Governing Documents.

(h) The Association, by contract or other agreement, may enforce applicable city and county ordinances, if applicable, and permit Dare County and/or any municipality having jurisdiction, to enforce ordinances within the Community for the benefit of the Association and its Members.

Section 5. Severability. Invalidation of any one of these covenants and restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 6. 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 the 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.

Section 7. Changes in Ownership. Any person or entity acquiring title to a Homesite shall notify the Board in writing of the name, mailing address, telephone numbers (home, work and mobile), and email address of the new Owner of the Homesite, and date of transfer of title, and such other information as the Board may reasonably require, within seven (7) calendar days after the completion of the new Owner's acquisition of title, whether such acquisition is by deed, will, intestacy, survivorship, or any other legal means of transferring title to real property. The transferor of such Homesite shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Homesite, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Section 8. Owners Required to Provide Contact Information. All Owners shall provide to the Secretary of the Association the name, mailing address, telephone numbers (home, work and mobile), and electronic mail (email) address of each Owner. Each Owner must maintain a functioning email address that is known to the Secretary of the Association. Any change to any such contact information shall be reported to the Secretary of the Association by the Owner within fifteen (15) days of the effective date of the change.

Section 9. Association Communications to Owners. All communications by the Association to the Owners, including but not limited to invoices for assessments, copies of budgets, membership meeting notices and agendas, and other Association-related communications, may be sent by the Association to each owner by electronic mail or other electronic means.

ARTICLE THREE AESTHETICS REVIEW

Section 1. Purposes. The Declarant desires to provide for the preservation of the values in the Properties with respect to any Dwelling Unit to be constructed on any Homeseite, and to that end will establish under the Association an Aesthetics Review Committee (the "ARC") in order to provide, enforce and maintain certain standards as to harmony of exterior design and location of the Improvements on any Homeseite in relation to surrounding structures, natural features and topography.

Section 2. Aesthetics Review Committee Generally.

(a) Unless expressly authorized in writing by the ARC, no Improvement may be constructed, started, commenced or maintained, and no exterior addition or alteration to any Improvement may be constructed, started, commenced or maintained, and no clearing or site work be started, commenced or maintained upon any Homeseite, until (i) the Owner submits to the ARC in triplicate, Plans showing the Proposed Work, and (ii) The ARC approves the Plans in writing, as to harmony of external design and location in relation to any surrounding Improvements, natural features and topography. Improvements that must be approved by the ARC include not only new construction, but also additions, removals, replacements, repairs, and any other Improvement or work to existing Improvements which are not interior in nature.

(b) The ARC shall have the absolute and exclusive right to refuse to approve any Proposed Work shown on the Plans which are not suitable or desirable in the opinion of the ARC for any reason, including purely aesthetic reasons, which in the sole and uncontrolled discretion of the ARC shall be deemed sufficient.

(c) The ARC in the exercise of its discretion shall not approve the location of a Dwelling Unit on any homeseite within 25 feet of the front line of such homeseite, within 10 feet of the side lines of such homeseite and within 20 feet of the rear line of such homeseite. While these minimum building setbacks shall not apply within a Harbor Villa Homeseite, those lots are subject to discretionary setbacks as applied in the next sentence. Notwithstanding any of the foregoing provisions, in the application of setbacks the ARC shall have complete authority to determine the appropriate building site and location for the Dwelling Unit on each and every Homeseite.

(d) Variances. The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, and in accordance with any rules and regulations adopted by the ARC governing variances. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. The ARC, with the approval of the Board, may vary the building setback lines recited herein, so long as such variance does not cause the revised setback requirement to be less than that set by Dare County at that time. Any such variance shall

be evidenced by a certificate of variance or compliance signed by the President or Vice President of the Association, in recordable form, and recorded by the Owner in the Office of the Register of Deeds of Dare County, all at the Owner's sole cost and expense.

(c) No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Aesthetics Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Improvements until the Proposed Work is completed, in which case it may be unreasonable to require changes to the Improvements involved, but the ARC may refuse to approve similar proposals in the future. Approval of applications or Plans for any Proposed Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

Section 3. Aesthetics Guidelines. A copy of the currently-approved Aesthetics Guidelines is attached to this Declaration as Exhibit A. Subsequent amendments to and revisions of the Aesthetics Guidelines may, but are not required to be, recorded with the Dare County Register of Deeds.

Section 4. Aesthetics Review Committee Membership.

(a) The ARC shall be composed of three (3) persons (who need not be Members of the Association) appointed by the Board who shall serve until death, resignation, or removal by the Board. The Board shall have full authority to designate a successor.

(b) A majority of the ARC may designate a representative to act for the ARC. Unless otherwise approved by the Association, neither the members of the ARC nor its designated representative shall be entitled to any compensation for services performed pursuant to this Declaration, but such members may be reimbursed for reasonable out-of-pocket expenses. The Association shall keep, or cause to be kept, a list of the names and addresses of the members of the ARC and a list of the names and addresses of any designated representatives of the ARC. Such lists shall be available to any Owner.

Section 5. Aesthetics Review Fees.

(a) Processing Fee. The ARC may adopt a Processing Fee in an amount established by the Board from time to time, for processing requests for approval of Plans. The Processing Fee shall be due and payable to the Association at the time that the Preliminary Plans (as defined in Section 6(a) below) and other documents are submitted to the ARC for review. The payment of the Processing Fee, as well as other expenses of the ARC required to be paid, shall be deemed to be an individual assessment enforceable against the Owner of the Homesite or Dwelling Unit as provided above.

(b) Infrastructure Protection Fee. Prior to any ground disturbing activities commencing on any Homesite for construction of an approved Dwelling Unit thereon, the

Owner, either directly or through the Owner's Contractor, shall pay to the ARC, on behalf of the Association, an Infrastructure Protection Fee in an amount established by the Board from time to time. Infrastructure Protection Fees shall be pooled, held in a proper escrow account, and used by the Association, in its unilateral discretion, to replace or repair damage done to any Hatteras Landing Improvement or infrastructure during construction of the Dwelling Unit, or for any other purpose whatsoever related to residential construction impact on, or for the general benefit of the community. The Infrastructure Protection Fee shall not be a waiver of nor limitation on liability for acts which damage Association property.

(c) The ARC may also from time to time and in addition to the Infrastructure Protection Fee, at its sole discretion, require of any contractor a cash or insurance performance bond to guarantee final site clean up and/or extraordinary road repairs necessitated by the actions of the contractor and his workers and subcontractors during the construction of any Improvements on the Properties.

(d) The ARC expressly reserves the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the ARC in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Homesite or Dwelling Unit.

(e) The Board may modify at any time any or all of the fees described in this **Section 5.**

(f) All fees described in this **Section 5** are non-refundable.

Section 6. Aesthetics Review Procedure.

(a) Preliminary Design Review.

(1) The Owner shall submit to the ARC a preliminary site plan, floor plans, elevations and specifications (the "Preliminary Plans") for preliminary review. Preliminary Plans may be in sketch form and need not be fully executed, but must be drawn to scale.

(2) Once the ARC has received and reviewed the Preliminary Plans, the ARC will make suggestions to the Owner as needed. Any suggested changes or modifications from the ARC shall be incorporated by the Owner into the final Plans before final approval can be given by the ARC.

(b) Final Submission and Review

(1) After submission and response to Preliminary Plans, the Owner shall submit the following items, in detail, to the ARC, as may be applicable, collectively referred to as the "Final Plans"):

- a. a completed Residential Building Application and a Contractor/Builder Registration Form;
- b. floor plans;
- c. elevations of all levels;
- d. building sections;
- e. specifications;
- f. site plan;
- g. roofing sample; and
- h. exterior color samples.

(2) The Owner shall include with the name of the contractor a statement as to the classification of contractor's license held by such contractor, the address and telephone number of the contractor, the names and telephone numbers of two (2) owners of comparable properties previously constructed by such contractor, and a minimum of two financial references for the contractor.

(3) Before approval can be given by the ARC for additions or alterations to existing Dwelling Units, samples of both the old roofing materials and new roofing materials must be submitted for verification of exact match.

(4) Before approval can be given for additions or alterations to existing houses, samples of both the old exterior colors and new exterior colors must be submitted for verification of exact match.

(5) The site plan shall include a landscaping and restoration plan providing for the re-establishment of vegetation to prevent erosion and promote enhancement of the Homesite.

(6) Within sixty (60) days after receipt of the Final Plans and all other required information, the ARC shall notify the Owner of the Homesite or Dwelling Unit in writing as to whether the Final Plans and the contractor have been approved. Such 60-day time frame shall not commence until the ARC has determined that (i) the ARC has received all of the required Final Plans and (ii) the Owner's application is complete. Unless a response is given by the ARC within sixty (60) days after all required information has been received, the Final Plans and/or contractor shall be deemed 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 sixty (60) days time period for further ARC 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 Homesite or Dwelling Unit and the conditions imposed shall become fully a part of the approved Final Plans.

(7) In addition to Plan approval, the ARC shall have the right to approve the contractor selected by the Owner of each Homesite or Dwelling Unit. A contractor shall be approved by the ARC if the contractor has an appropriate North Carolina general

contractor's license in good standing, meets the ARC current standards for builders, is in good financial standing, has a good reputation in the community and has constructed, to the satisfaction of the ARC, comparable structures on a regular and routine basis.

(8) The ARC shall be obligated to specify the particular grounds upon which denial of any application is founded.

(9) If Plans are approved, one set of Plans denoted as approved (or approved with specified conditions) shall be retained by the ARC and the other two shall be returned to the applicant.

(c) Final Inspection and Certification.

(1) At the completion of the Proposed Work, the Owner shall submit to the ARC a signed and notarized statement of a duly licensed architect, engineer, or surveyor, that the Proposed Works has been completed in compliance with the Final Plans as approved by the ARC. The ARC may in its discretion waive this requirement for circumstances when the level of the Proposed Work does not warrant such a certification.

(2) The ARC may conduct a final inspection of the completed project to verify that work has been done in accordance with the approved submission.

(3) If, in the sole discretion of the ARC, the construction is not in compliance with the Aesthetics Guidelines, the Owner shall be obligated to make corrections to bring the Improvements into compliance with the Final Plans as approved by the ARC.

(d) Appeal of Adverse Decision. Any Owner of any Homesite or Dwelling Unit disagreeing with the finding of the ARC regarding the owner's application for approval may appeal the decision to the Board by giving written notice of appeal to the President of the Association within fifteen (15) days following receipt of the ARC's decision. The Board shall then review the Plans, giving the Chair of the ARC the opportunity to present to the Board specific reasons why the action was taken, in the presence of the Owner of the Homesite or Dwelling Unit or his agent, and the Owner of the Homesite or Dwelling Unit or his agent may present information challenging the findings of the ARC. The Board shall have the power to reverse, modify or affirm the ARC's decision, which the Owner agrees shall be a final and non-reviewable determination.

(e) Application of this Article. This Article Three shall apply to any additions to the existing Property subsequently made subject to this Declaration and the terms and provisions of any Supplemental Declaration.

ARTICLE FOUR MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner of a fee simple interest in any Homesite in the Community is subject by this Declaration to assessment by the Association. Every person or entity who is a record Owner of a fee simple interest in any

homesite shall be a Member of the Association. However, any such person or entity holding such interest merely as a security for the performance of an obligation shall not be a Member.

Section 2. Voting Rights. There shall be one vote for each Homesite. When more than one person or entity holds an interest in any homesite, all such persons shall be Members, and the vote for such Homesite shall be exercised as they among themselves determine and such persons shall designate one (1) person to vote for their Homesite, but in no event shall more than one (1) vote be cast with respect to any such Homesite. If the owners cannot agree then the first persons (present at the meeting) named as Grantee in their deed shall cast the vote.

ARTICLE FIVE PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Title to Common Properties. Prior to the date of any transfer of the streets and roads to the appropriate government agency or authority by the Association, said streets and roads shall be Common Properties and the expense of maintenance shall be borne by the Association.

Section 2. Easement or Other Transfer of Common Properties to Public Agency or Utility. The Association shall have the right 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, but only if such dedication or transfer is approved by more than fifty percent (50%) of the votes in the Association. Such vote may be taken using any method set forth in this Declaration or in the Bylaws, or under the North Carolina General Statutes. If so agreed to and approved by the Members, such dedication and transfer, specifying the purpose(s) and conditions(s) thereof, shall be executed by the President of the Association with the same formalities of a deed and recorded in the Dare County Public Registry.

Section 3. Easements in Common Properties.

(a) Each Owner shall have a nonexclusive right and easement of use, access, and enjoyment in and to the Common Properties, subject to:

- (1) The provisions of Governing Documents and any other applicable covenants;
- (2) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (3) The Board's right to adopt rules regulating use and enjoyment of the Common Properties, including rules limiting the number of guests who may use the Common Properties;
- (4) The Board's right to suspend the right of an Owner to use

recreational or other facilities within the Common Properties (a) for any period during which any assessment, lien or charge against such Owner's Homesite remains delinquent, and (b) for a period not to exceed 30 days for a single violation or for a longer period in the case of any

continuing violation, of the Governing Documents after notice and a hearing pursuant to the Bylaws;

(5) The Board's right to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(6) The rights of certain Owners to the exclusive use of those portions of the Common Elements designated "Limited Common Elements."

(b) The Owner of a Homesite may extend such Owner's right of use and enjoyment of the Common Properties to the other members of such Owner's household and to guests, subject to reasonable Board regulation. If the Owner of a Homesite does not reside on the Homesite, the Owner shall be deemed to have assigned all of the Owner's rights to use and enjoy the Common Properties to the occupants of the Homesite, who may extend the privilege of use and enjoyment to their guests, subject to reasonable Board regulation.

Section 4. Easements of Encroachment. The Association and every Owner shall have reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Homesite and any adjacent Common Properties and between adjacent Homesites due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of the Governing Documents) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the person or entity claiming the benefit of such easement.

Section 5. Easements of Utilities and Other Facilities.

(a) Installation and Maintenance. The Association and all utility providers shall have perpetual non-exclusive easements, on or within any of the following locations within the Properties:

(1) anywhere within the Properties located outside of the building envelope (minimum building lines) of Dwelling Units as shown on the final recorded plats of the Properties;

(2) within the building envelope (minimum building lines) of Dwelling Units as shown on the final recorded plats of the Properties, but only if such easements do not interfere with any underground or aboveground Improvements placed or proposed to be placed on the Dwelling Unit by an Owner and previously approved by the ARC, unless the Owner of such Dwelling Unit approves such easement in writing.

(b) Purposes. The easements described in this Section 5 may be granted for any of the following purposes:

- (1) installing utilities and infrastructure to serve the Properties, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, stormwater drainage systems, irrigation systems, sanitary sewer systems, street lights and signage, or within public rights-of-way or easements reserved for such purpose on the recorded plats for the Properties, unless such installation of utilities and infrastructure conflicts with a site plan of an Owner (or contract purchaser if known to the Association) previously approved by the Association;
- (2) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other Improvements; and
- (3) access to read utility meters and related equipment.

(c) **Minimal Interference.** All work associated with the exercise of the easements described in this Section 5 shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the person or entity exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Homesite, nor shall it unreasonably interfere with the use of any Homesite and, except in an emergency, entry onto any Homesite shall be made only after reasonable notice to the Owner or an occupant.

Section 6. Driveways for Harbor Villa Homesites. Every Harbor Villa Homesite shall be entitled to a conveyance from the Declarant or the Association of a fee simple driveway access no less than 25 feet in width which shall extend from the right of way of Shore Drive or North Point Road and which shall be shown on the plans and drawings submitted to the ARC for review. The ARC shall have complete authority to determine the appropriate driveway location and shall recommend that location to the Board of Directors of the Association which shall authorize a deed of conveyance for the driveway location to the respective owner. The cost and expense of surveys, deeds and other legal documents required to create the driveway under this Section 6 shall be procured by the Owner at the sole cost and expense of the Owner.

Section 7. No Partition. Except as permitted in this Declaration, the Common Properties shall remain undivided, and no person or entity shall have the right to bring any action for the partition of any portion of the Common Properties without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

ARTICLE SIX COVENANT FOR PAYMENT OF ASSESSMENTS; BUDGET

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Homesite, by acceptance of a deed for such Homesite, whether or not it shall be so expressed in any such deed or other conveyance, and pursuant to Section 47F-3-115 of the Act, does hereby covenant and agree to all the covenants and restrictions of this Declaration and

further promises to pay to the Association: (1) annual assessments or charges as herein or in the Bylaws provided, (2) special assessments for capital improvements, such annual and special assessments to be fixed, established, and collected from time to time as herein or in the Bylaws provided, and (3) any liquidated damages or summary charges imposed under authority contained in the Bylaws or these Covenants, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association incidental to the enforcement of these Covenants or the Aesthetic Guidelines, collection of assessments (both annual and special) or collection of damages or charges. The annual and special assessments and any liquidated damages or summary charges, together with such interest thereon and costs of collection thereof as herein provided shall be a charge on the land and shall be a continuing lien upon the Homesite against which each such Assessment is made. 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(s), jointly and severally, who is (are) the Owner(s) of such Homesite at the time when the Assessment became due.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, security, safety and welfare of the Members and in particular for:

- (a) the improvement, maintenance, and replacement of The Common Properties,
- (b) establishment of capital replacement reserves,
- (c) for the acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of the Common Properties, including but not limited to, the cost of repairs, replacements, additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Properties, the procurement and maintenance of insurance related to the Common Properties, its facilities and use in accordance with the Bylaws, and such other requirements as may be necessary to perform all of the aforesaid functions and purposes; and

(d) Common expenses as defined in Sections 47F-1-103(5) and 47F-3-115 of the Act.

Section 3. Allocation of Assessments. Both annual and special assessments shall be allocated to each Homesite on an equal prorata basis by the following fraction: The numerator shall be the amount of the assessment. The denominator shall be the number of Homesites.

Section 4. Budgeting for and Allocating Association Expenses.

(a) Preparation of Budget. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated common expenses of the Association for the coming year, to be allocated among all Homesites, and separate budgets reflecting the estimated Limited Common Expenses to which the Association expects to provide benefits or services during the budget period. Each budget shall also reflect the sources and

estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Homesites, and the amount estimated to be generated through the levy of assessments against the Homesites. The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Limited Common Expense, respectively. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected life of each, the expected repair or replacement cost, and the contribution required to fund the projected need by annual contributions over the expected useful life of the asset.

(b) Calculation of Annual Assessments. Upon determining the total amount of income required to be generated through the levy of annual assessments, the Association shall allocate such amount among all Homesites subject to assessment on the effective date of the budget in accordance with the formula set forth in Section 3 of this Article Six. The amount allocated to each Unit shall then be levied as an annual assessment.

(c) Adoption of Budget. The budget for the Association shall be adopted by the Board pursuant to Section 47F-3-102 of the Act. The Board shall schedule a budget meeting of the Members within thirty (30) days after the Board's adoption of the budget, pursuant to the procedures set forth in Section 47F-3-103 of the Act, with the following modification: The budget shall automatically become effective unless disapproved at a meeting by Owners representing at least 75% of the votes in the Association.

(d) Budget Revisions. The Board may revise the budget and adjust the assessments levied pursuant thereto from time to time during the year, subject to the same notice requirements and rights to disapprove the revised budget as set forth above.

(e) Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay annual assessments and any Limited Common Expense on the same basis as during the last year for which an assessment was made, if any, until a new budget becomes effective and a new assessment is levied pursuant thereto. Any such budget may include as an expense item any shortfall in amounts previously collected.

(f) No Owner may exempt himself from liability for assessments by non-use of Common Elements, abandonment of such Owner's Homesite, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or Improvements, or from any other action it takes.

(g) Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth

whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Section 5. Special Assessments. In addition to other authorized assessments, the Association may levy special assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such special assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Homesites to which a Limited Common Expense is allocated if such special assessment is for a Limited Common Expense. Except as otherwise specifically provided in this Declaration, any special assessment shall require the affirmative vote or written consent of Owners (if a Common Expense) or Owners of Homesites to which a Limited Common Expense is allocated (if a Limited Common Expense) representing more than 50% of the total votes allocated to Homesites which will be subject to such special assessment. Special assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the special assessment is approved.

Section 6. Lien for Assessments.

(a) Pursuant to Section 47F-3-116 of the Act, the Association shall have a lien against each Homesite to secure payment of delinquent assessments, as well as interest, late charges, and costs of collection, including attorneys' fees. The lien arises 30 days after the due date. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

(b) Any assessment levied against a Homesite remaining unpaid for a period of 30 days or longer shall constitute a lien on that Homesite when a claim of lien is filed of record in the Office of the Clerk of Superior Court of Dare County in the manner provided herein and in Section 47F-3-116 of the Act.

(c) If the assessment for which lien has been filed against a Homesite remains unpaid for thirty (30) days, the Board shall commence an action against the Owner and/or the Homesite to enforce the lien and/or the payment of the assessment. Such action may include but not be limited to, nonjudicial foreclosure, judicial foreclosure, action for a monetary judgment, acceptance of a deed in lieu of foreclosure, or other action to recover the sums secured by the lien filed by the Association.

(d) The Board or, at the request of the Board, the Dare County Clerk of Superior Court, may appoint a trustee to (i) foreclose the lien of the assessment as provided by Section 47F-3-116 of the Act and Article 2A of Chapter 45 of the North Carolina General Statutes, and (ii) deed the foreclosed property to the high bidder at the foreclosure sale.



(e) The Association may enter one or more bids at the foreclosure sale and may purchase the property at the foreclosure sale, even if the foreclosure sale is conducted by or at the direction of the Association. While a Homesite is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Homesite shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Homesite had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(f) Sale or transfer of any Homesite shall not affect the assessment lien or relieve such Homesite from the lien for any subsequent assessments. However, the sale or transfer of any Homesite pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. Pursuant to Section 47F-3-116(f) of the Act, the subsequent Owner to the foreclosed Homesite shall not be personally liable for assessments on such Homesite due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Homesites subject to assessment under this Declaration, including such acquirer, its successors and assigns.

Section 7. Authority to Assess Owners: Time of Payment. Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Homesite and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the annual assessment and any Limited Common Expense shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Homesite, the Board may require the outstanding balance on all assessments to be paid in full immediately.

Section 8. Exempt Property. All Common Properties subject to this Declaration shall be exempted from the assessments, charges and liens created herein. Notwithstanding any provisions of this Section, no Homesites shall be exempt from said assessments, charges or liens.

ARTICLE SEVEN. EXTERIOR MAINTENANCE; INSURANCE

Section 1. Exterior Maintenance.

(a) Homesites and structures. In addition to maintenance on the Common Properties, and after thirty (30) days' written notice to any Owner which notice shall specify the required maintenance, the Association shall have the right but not the obligation to provide maintenance upon any Homesite which is subject to assessment. Such maintenance may include paint, repair, replacement and care of roofs, gutters, downspouts, removal of signs in violation of this Declaration, and exterior Improvements on any structure located on a Homesite. Such maintenance as to a vacant homesite may include the mowing of grass and weeds, the trimming of shrubs, or the removal of trash and litter. Any maintenance on any homesite is subject to assessment as provided in Section 2 of this Article.

(b) Breakwaters and bulkheads. Homesites 1 and 2, Soundfront Homesites, are bounded on the southwest and south by special bulkheads and breakwater structures which act to protect parts of the Common Properties of the Association from erosive forces. Those bulkheads and structures are therefore vital to the protection of common facilities such as the overlook walkway, gazebo, walkway bridge, and other common facilities which play a part in maintaining property values throughout Hatteras Landing. Therefore, Homesites 1 and 2, Soundfront Homesites, are hereby encumbered by a special requirement that the Homesite Owners shall consistently maintain the bulkheads and breakwater structures in a condition equal to their condition as of 1 April 1997 as shown on exhibits on file with the Association, which are incorporated herein by reference. Failure to comply after thirty (30) days' notice to the Owner gives rise to the right of the Association to provide required maintenance together with a right of unhampered ingress and egress over and upon the appropriate Homesite at a site or sites selected by the Association to allow performance of the required maintenance. The Owner shall be responsible for the cost of maintenance similar to exterior maintenance described in this Article.

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

Section 3. Insurance on Dwelling Units. Each Owner of a Homesite on which a structure is built, by acceptance of a deed for the same, whether or not it shall be expressed in said deed or by exercise of any act of ownership, is deemed to covenant and agree as follows:

- (a) To keep every structure on each Homesite insured against loss by fire or other casualty, with extended coverage insurance, in an amount equal to at least 100% of the replacement value of such structure.
- (b) To build, restore, or remove every structure on each Homesite in the event of damage thereof and to apply the full amount, to the extent necessary, of any insurance proceeds to the restoration, repair or removal of such structure; and
- (c) To keep the structures on each Homesite in good repair as required by this Declaration or by the Bylaws.

Section 4. Liability Insurance.

- (a) At all times the Owner shall keep in force at Owner's expense public liability insurance with companies licensed to do business in North Carolina and naming as Insureds both Owner and Association, with minimum limits of \$1,000,000.00 combined single limits amid annual aggregate on account of bodily injuries to or death of one or more persons as the result of any one accident or disaster, and \$100,000.00 on account of damage to property.

(b) The policy limits may be decreased by action of the Board of Directors.

(c) The Owner shall furnish to the Association within thirty (30) days of taking ownership of a Homesite copies of policies or certificates of insurance evidencing coverage required by this Section. All policies required hereunder shall contain an endorsement providing that the insurer will not cancel or materially change the coverage of such policies without first giving ten (10) days' prior written notice thereof to the Board of Directors.

ARTICLE EIGHT WASTEWATER DISPOSAL SYSTEMS

All Soundfront Homesites, Oceanfront and Oceanside Homesites have been designed to allow on-site sewage disposal systems which must be designed, located, operated and maintained as required by State and local laws and regulations. All Harbor Villa Homesites are connected to wastewater system hardware owned, operated and maintained by the Hatteras Landing Wastewater Association, Inc.; therefore, all Harbor Villa dwelling units must be serviced for wastewater disposal by that Association and the dwelling unit owners shall pay such assessments and fees as may be required from time to time by the Wastewater Association.

ARTICLE NINE AMENDMENT TO DECLARATION

Section 1. Procedure. This Declaration may be amended pursuant to the procedures and requirements of Section 47F-2-117(a) of the Act.

Section 2. Certification of Declaration Amendment. The President or Vice President of the Association is authorized to prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

(signature begins on the following page)

IN WITNESS WHEREOF, the Association has caused this Amendment to be executed by its duly authorized President.

HATTERAS LANDING HOMEOWNERS
ASSOCIATION, INC., a North Carolina nonprofit
corporation

BY: 
Jeff Wells, President

NORTH CAROLINA
DARE COUNTY

I, Robert B. Hobbs, Jr., a Notary Public of the County of Dare and State aforesaid, certify that Jeff Wells personally came before me this day and acknowledged that he is President of HATTERAS LANDING HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this 2 day of April, 2012.


Robert B. Hobbs, Jr., Notary Public

ROBERT B. HOBBS, JR.
Notary Public
Dare County, NC

My commission expires: September 11, 2016
(AFFIX NOTARY SEAL)

Hatteras Landing Declaration revised 2012-02.wpd

EXHIBIT A

HATTERAS LANDING HOMEOWNERS ASSOCIATION, INC.

Amended and Restated Aesthetics Guidelines

I. Purpose

Hatteras Landing is a community development in which care has been taken to preserve natural features of the environment and yet allow the creation of Dwelling Units and other uses. These Aesthetics Guidelines and later amendments are to assure appropriate development of Oceanfront, Oceanside, Soundfront and Harbor Villa Dwelling Units which will complement each other, promoting the enhancement of property values and the mutual enjoyment of the community.

II. Aesthetics Review Committee ("ARC")

In accordance with the Declaration of Covenants, Conditions and Restrictions to which these initial Aesthetics Guidelines are attached, the ARC has the purpose of providing, enforcing and maintaining certain standards as to harmony of exterior design and location of the Improvements on any Homesite in relation to surrounding Improvements (as that term is defined in the Declaration), natural features and topography. The ARC will review all plans for Improvements. The ARC is to ensure that each of the Dwelling Units reflects the overall objectives of the entire community and that the unique natural setting of the community is preserved and enhanced.

III. Inclusive (but not limited to) Areas of Regulation

Building Restrictions

These policies concern all new construction, additions, and/or modifications of existing Dwelling Units, Improvements in the Community:

1. Maximum height. No Dwelling Unit or other permitted structure on a homesite is to have an overall height more than fifty-two (52) feet measured from ground level to its highest point.
2. Minimum size. All Oceanfront and Oceanside Dwelling Units shall have a minimum of 2,500 square feet of heated living area; all Soundfront Dwelling Units shall have a minimum of 2,000 square feet of heated living area; all Harbor Villa Dwelling Units shall have a minimum of 1,800 square feet of heated living area. Square footage shall be measured from exterior walls of the Dwelling Unit.

3. Maximum Size. No Dwelling Unit shall contain more than seven (7) bedrooms. The term "bedroom" shall mean a room, regardless of how it is identified in the Plans, which contains (i) a minimum of 120 square feet, (ii) an interior door to a hallway or another room, (iii) an exterior door and/or an exterior window, and (iv) a closet.

4. Building setbacks. Minimum building setbacks shall be governed by Article Three, Section 2 of the Declaration. Additionally, the ARC may (but shall not be required to) approve certain amenities (if allowed by the Dare County zoning ordinance) which are constructed low to the ground (such as pools, shuffleboard courts, etc.) within the rear yard setback areas.

5. Dwelling Unit site coverage. Maximum Homesite coverage shall be as allowed by the Dare County zoning ordinance except for Dwelling Unit Homesites HV-4 through HV- 11 as to which there shall be no maximum except as may be determined in the discretion of the ARC as set out in Article Three of the Covenants.

6. Foundations, pilings and lattice. The foundation must receive the same careful attention to detail and finishes as the main body of the Dwelling Unit. Any concrete block foundation must be pargeted and finished in an approved color. Exposed pilings are not appropriate. The foundation may be fully enclosed or partially enclosed with lattice or siding or a combination of these treatments. Lattice may be installed in either of two ways or as otherwise approved by the ARC: (1) continuous horizontal strips of 1" x 4" boards with 2 ½" spaces between each board to enclose the perimeter of the building, decks and stairs as a unit; or (2) criss-cross lattice installed vertically and horizontally and framed between pilings to enclose the perimeter of the building, decks and stairs as a unit. Horizontally installed board lattice shall be finished in a color that matches the Dwelling Unit's color. Crisscross lattice may be finished in a color matching either the color of the Dwelling Unit, the color of the trim, or white. Any gates or doors installed in the lattice shall be constructed of the same material as the lattice so that a continuous surface is maintained around the exterior of the Dwelling Unit.

7. Exterior wall materials. It is the intention of these Aesthetic Guidelines to achieve a harmonious environment and to achieve such goal only wood products or cementitious wood-design products or any similar product approved by the ARC will be allowed to be applied to the exterior wall surfaces. A variety of wood finishes may be permitted upon review of the ARC. Wood shingles, horizontal lapped siding, and board and batten sidings are appropriate. All other structures on a Homesite such as pool houses, should have the same exterior wall finish as the Dwelling Unit. NOT permitted sidings include (without limitation): stucco finishes, metal siding, synthetic wood-like siding (except cementitious-wood design products), exposed decorative plywood siding (such as T- 111), any wood siding run at a diagonal, or any vinyl or aluminum siding covering the majority of the Dwelling Unit or other permitted structure. All windows and doors must be trimmed on all sides with wood trim or other approved trim a minimum of 4 inches in width.

8. Exterior Color. Color used on Dwelling Units is a dominant visual element and a major expression of the overall theme of the community. Sensitive, subtle color selections of grays, pale pastels or natural earth tone paints for the exterior body of the Dwelling Unit are the

only acceptable finishes except as otherwise approved by the ARC. Each Dwelling Unit or other permitted structure on a Homesite must be painted with a color approved by the ARC. The ARC will offer a selection of permitted colors; other colors may be considered. Each Dwelling Unit should not use more than three (3) primary exterior finish colors (body of Dwelling Unit, trim, exterior ceilings, and porches). Exterior doors and exterior porch ceilings may be painted with approved colors which are not one of the three selected and approved three primary exterior finish colors. Colors for all Dwelling Units, any other permitted structure, trim, roof materials, screens, railings, etc. are to be specified on the Aesthetics Review Form that is to be submitted to the ARC for review and, if satisfactory, approved.

9. Windows and Doors. Areas with major fenestration should be oriented to afford privacy while taking advantage of special views, such as open spaces, the ocean, sound and any ponds or creeks. Windows should be carefully proportioned and located to enhance the exterior appearance and interior light quality and views. Window and door frames may have anodized aluminum, vinyl, or painted finishes, in colors as approved by the ARC. Natural color aluminum finishes are not allowed. It is recommended that Dwelling Units not have openings (doors and windows), which total more than 50% of the exterior wall area. In an effort to achieve adequate fenestration on each elevation of a Dwelling Unit, windows and/or doors should be provided for each level. All Dwelling Units must have a minimum of two entry doors which shall be hinged, either single or double entrance.

10. Roofs. Roofs for every Dwelling Unit and any other permitted structure should have a similarity of form, materials and color which will contribute to the desired homogenous character. The main roof should slope equally in each direction from the roof peak. Gable and hip roofs with slopes of at least 6/12 are recommended for the main body of the Dwelling Unit. NOT permitted are flat roofs (which constitute more than 25% of the total roof area), A-frame roofs, dome roofs, "butterfly" roofs, or shed roofs composed of only one plane as an overall roof shape for the majority of the building. Permitted roofing materials are wood shingles, wood shakes, composition shingles, slate and standing-seam metal. Roofing material on all composite shingle roofing shall have a minimum weight of 305 pounds per square. The finished color of any roof material must be approved by the ARC. Shingle colors shall be in subdued grays or earth tones except as otherwise approved by the ARC. Copper may be permitted to weather to a natural patina. Other metal shall be finished in a color to match the Dwelling Unit's shingle color to be approved by the ARC. Covered porches and any other structures on the Dwelling Unit should have the same roofing material and roof color as the Dwelling Unit. Overhangs should not exceed 30 inches unless approved by the ARC.

11. Roof Structures. Ornamental or functional elements, such as balustrades, widow's walks, lantern towers, weather vanes and lighting rods attached to the roofs are allowed only when approved by the ARC. All roof accessories such as vent stacks and roof vents, shall be painted to match the roof and located away from the street side elevation. All exposed flashing shall be copper which is allowed to weather to a natural patina or copper or aluminum painted to match or blend with the shingle color. All plumbing vents, exhaust fans, or similar protrusions through the roof shall be as low profile as possible and aligned where possible on the surfaces where more than one is required.

12. Chimneys. Chimneys must conform to the overall building height limitations adopted by Dare County while providing adequate draft. Exposed metal flues are not permitted, and all chimney caps should be finished in a complementary finish to the Dwelling Unit and trim colors. Cantilevered fireplaces on walls without any decking are not permitted.

13. Satellite Dishes and Antennae. Satellite dishes, antennae and similar devices for the transmission of television, radio, satellite, or other signals of any kind are prohibited, except for (i) an antenna or satellite dish designed to receive direct broadcast satellite service, which is one (1) meter or less in diameter; (ii) an antenna or satellite dish designed to receive video programming services via multi-point distribution services, which is one meter or less in diameter or diagonal measurement; or (iii) an antenna or satellite dish designed to receive television broadcast signals ("Permitted Devices") shall be permitted. The ARC must approve the location of each new and replacement antenna or satellite dish, and such approval shall not be unreasonably withheld. The Owner shall give first preference to mounting any Permitted Device on a post close to the Dwelling Unit if acceptable quality signals can be received in that configuration. The ARC will approve a Permitted Device to be mounted on the Dwelling Unit itself only if the Owner can reasonably demonstrate that mounting the Permitted Device on a post near the Dwelling Unit will not provide acceptable quality reception. The Owner shall make a reasonable effort to screen the Permitted Device from the view of adjacent Dwelling Units, streets and Common Properties in a manner consistent with the placement of other such devices within the Properties.

14. Decking.

(a) All decking girders shall be constructed of pressure-treated wood. Decking material, handrails and pickets shall consist of either pressure-treated wood or composite material. Vertical pressure-treated pickets of 2 x 2 or architecturally designed balusters are permitted and other handrail details will be considered provided they conform to the North Carolina Building Code and maintain the classic architectural feeling of the community. Handrails and pickets may be painted in a color to match the color of the Dwelling Unit or the trim of the Dwelling Unit. NOT permitted will be decks erected above the slope of any roof surface of the Dwelling Unit standing on or supported by exposed, open posts and beams or any decks higher than the highest interior floor level.

(b) Decks located at second floor levels can present a significant design challenge from an aesthetic point of view. The perimeter of any deck above the first floor level must align vertically with the perimeter of any deck or other construction underneath it, except that on one side such a deck may be cantilevered beyond the perimeter below by no more than 30". Decks above the first floor level (not counting the ground floor) may not appear to be supported by piling running all the way to the ground and such construction or plans will not generally be approved. Such decks may be approved only if it is demonstrated to the ARC that the final appearance will be consistent with the architectural style which characterizes the community.

(c) Maximum deck coverage should not exceed 60% of the heated space of any Dwelling Unit or other permitted structure.

15. Stairs. All exterior stairs shall be constructed of the same materials as the adjacent decks and the handrails will match and conform to the approved handrails of the Dwelling Unit. All stairs between decks must be constructed within the perimeters of the decks. Cantilevered stairways will not generally be approved by the ARC. Stairs not visible from the street will be allowed to run from the first floor elevation to grade level outside the perimeter of the deck provided they are parallel to the deck.
16. House Numbers and Dwelling Unit Names. House numbers and Dwelling Unit names must be installed in an easily visible location near the front entrance of the Dwelling Unit and are to be made of antique brass, bronze, copper, or painted wood. These numbers and signs are to NOT be more than 24" in height and 36" in width or cover a total area of not more than five square feet in area. The longer dimension shall be horizontal.
17. Other Improvements and Structures. Any permitted other Improvement or structure on a Homesite such as pool houses must be compatible with the Dwelling Unit. Any such structures should be of the same material and colors as the Dwelling Unit. Carports and garages should be connected to the Dwelling Unit by an enclosed, covered passageway but are not encouraged. No gazebos will be allowed on the oceanfront or in any area where they interfere with visual sight lines.
18. Free Standing Structures. Structures that will not be permitted in the Properties or allowed on any of the Homesites are as follows: freestanding hot tubs, fences (other than fences used for screening or in landscaping details), driveway gates or gate posts or any outbuilding or other structure not approved by the ARC.
19. Boardwalks and Beach Access. The National Park Service ("NPS") has complete and total control over the construction of any type of boardwalk across the lands of the United States Government to reach the seashore of the Atlantic Ocean. The Association has an informal plan relating to beach boardwalks which is on file with the NPS. The ARC coordinates all applications from Owners concerning the construction, repair or replacement of boardwalks. The NPS must approve all such applications. Any inquiry from Owners concerning boardwalk construction, repair or replacement should begin with the ARC and be handled by the ARC and the Association directly with the NPS. The NPS changes its requirements from time to time, and therefore it is not possible to prescribe size, grade, contours, height or any other feature that may be required. Currently, the NPS limits the number of walkovers or boardwalks to one boardwalk for every 200 feet. This requirement severely limits which lots may have a boardwalk and how many adjacent lots may tie into the same boardwalk. All boardwalks must be constructed and completed prior to occupancy of the Dwelling Unit.
20. Parking and Driveways. Every Dwelling Unit shall provide a minimum of one on-site (i.e. on the Lot, not on the street) parking space for each bedroom contained in the Dwelling Unit. One-site parking may be provided in carports or garages. Driveways and parking areas must be concrete pavers. Garages, driveways and off-street parking should be screened with planting or fencing or be located away from the front of the Dwelling Unit where possible. All concrete paver driveways and parking areas must be finished in a color approved by the ARC.

21. Service Yards. The service yards are to be screened from view from roads and adjacent properties by a visual barrier at least six (6) feet height, which may be a fencing material or vegetated buffer to be approved by the ARC. All HVAC equipment, propane tanks and other equipment stored outside the Dwelling Unit must also be screened from view. Fencing material should be consistent with any lattice treatment of the foundation of the Dwelling Unit and must be consistent with color and materials used on the Dwelling Unit. Chain link fencing is not permitted. The location of all HVAC equipment, propane tanks and other equipment stored outside of a Dwelling Unit must appear on the foundation plan submitted to the ARC.

22. Landscaping.

(a) Plans for any landscaping, grading, excavation, or filling of Dwelling Unit sites must be approved by the ARC before site work can begin. These plans must show the ratio of the area to be covered by the Dwelling Unit, decks, patios, and other structures versus the area to be left in a natural state. Total impervious coverage of any Homesite shall not exceed fifty percent of the total area of the homesite except in Harbor Villa Homesites.

(b) Landscaping plans must show topography, all trees larger than three (3) inches in diameter (measured 2' above grade at tree base) and their approximate spread and all groupings of smaller trees and shrubs whose spread is more than twenty (20) feet in diameter, and all flowering shrubs.

(c) No Owner may remove or alter any trees or shrubs larger than three (3) inches in diameter (measured 2' above grade at tree base) from any Homesite without prior approval of the ARC.

(d) All landscaping plans, including (without limitation) terraces, walks, paths, outdoor lighting fixtures, fences, bulkheading, walls, pools, boardwalks, dune crossings and screens, are to be shown on the plans and are subject to approval by the ARC. All landscaping of Dwelling Unit sites must be completed within ninety (90) day of occupancy.

23. Lighting Fixtures.

(a) Exterior lighting - Directional lamps with built-in reflectors shall be clear or white. Lamps (light bulbs) for nondirectional fixtures shall be white, inside frosted and not exceeding 60 watts (if incandescent) or its equivalent wattage in other types of light bulbs.

(b) Directional Light - The concentrated brightness of light bulbs of adjustable directional lights (spot lights, flood lights, etc.) must not unreasonably interfere with use and enjoyment of adjacent properties.

(c) Practically, if these lamps or fixtures are used, they shall be aimed so that the bulbs are shielded from the view of windows and decks on adjacent properties.

(d) Non-directional Lights - Non-directional light fixtures used for general lighting must have enclosures that conceal the shape of the lamp (light bulb). Enclosures should

be translucent, not transparent. Ideally, positioning of exterior light fixtures to conceal the source of the light is preferable.

- (e) Light fixtures not attached to the building may not exceed a height of 24 inches above grade.
- (f) Smoke or dark colored glass for exterior lighting is recommended.
- (g) NOT PERMITTED: Mercury (except for trace amounts in CFL bulbs), metal halide, or sodium lamps in any fixture.
- (h) Lighting fixtures within twenty (20) feet of the property line on the street should be designed so that the source of light is not directly visible from such property line.

EXHIBIT B

**AMENDED AND RESTATED
BYLAWS OF**

HATTERAS LANDING HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME

1.1. **Name:** The name of this nonprofit corporation as incorporated in the Charter is Hatteras Landing Homeowners Association, Inc. (the "Association").

1.2. **Incorporation:** The Association is and shall be a Nonprofit Corporation existing under and by virtue of the North Carolina Nonprofit Corporation Act, Chapter 55A of the North Carolina General Statutes (the "NCA").

1.3. **Authority:** These Bylaws are adopted under authority of Section 55A-2-06 of the NCA, and Section 47F-3-106 of the North Carolina General Statutes, part of the North Carolina Planned Community Act (the "PCA").

ARTICLE II

PURPOSE AND OBJECTIVES

2. **Purpose:** The purposes of the Association shall be as follows:

2.1 **Allowed Activities.** To engage in any lawful activity authorized for nonprofit corporations in the State of North Carolina, especially including, but not limited to, the ownership and administration of the Planned Community known as Hatteras Landing, located on Hatteras Island, Dare County, North Carolina, and the administration and enforcement of the Declaration of Covenants, Conditions and Restrictions of Hatteras Landing, as amended and restated (the "Declaration") and the Aesthetic Guidelines of Hatteras Landing (the "Aesthetic Guidelines").

2.2 Prohibited Activities.

2.2.1 No part of the property, assets or net income of the Association shall inure to the benefit of any Director, Officer, Member or private person, except the

Association shall be permitted when necessary to hire and pay personnel reasonable compensation in order to carry out its objectives.

2.2.2 No activity shall be permitted which would disqualify the Association from acquiring and/or maintaining a tax-exempt status under Internal Revenue Code ("IRC") Section 501(c) and similar State of North Carolina tax-exempt status.

ARTICLE III

OFFICES

3. **Office:** The principal office of the Association shall be located at such address as may be established by the Association from time to time.

ARTICLE IV

MEMBERSHIP

4.1. **Qualifications.** Membership in the Association shall be composed of the Members (also known as Owners), as defined in the Declaration and in the PCA.

4.2. **Maintenance of Membership:** To be a "Member in Good Standing," a Member shall:

4.2.1 pay on or before the due date thereof all dues, assessments and charges levied by the Association;

4.2.2 not violate any provision of the Declaration or Aesthetics Guidelines; and

4.2.3 not allow a Member's Lot to be in violation of the Declaration or Aesthetics Guidelines.

ARTICLE V

MEETING OF THE MEMBERSHIP

5.1. **Annual meeting of the membership:** The annual meeting of the membership of the Association shall be held at the date, time and place selected by the Executive Board (the "Board of Directors" or the "Board"). The purpose of the meeting shall be the election of Directors, the distribution of annual reports, and the transaction of such other business as shall be properly presented.

5.2. **Special Meetings of the Membership:** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by

resolution of the Board or upon a petition signed by Members representing at least twenty percent (20%) of the total votes in the Association.

5.3. **Notice of Meetings:** Written or printed notice stating the place, day, and hour of any meeting of the Members shall be given to each Member entitled to vote at such meeting, not less than 10 nor more than 60 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. The method of giving notice of the meeting shall be pursuant to Section 10.5 of these Bylaws, unless the PCA or NCA expressly provides to the contrary notwithstanding any provision of the Bylaws. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

5.4. **Waiver of Notice:** Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

5.5. **Quorum:** A quorum at meetings of the Members of the Association shall consist of a majority of the Members eligible to vote. The provisions of Section 47F-3-109(c) of the PCA shall apply if a quorum is not then present at an annual or special meeting.

5.6. **Action:** At such annual or special meeting, an affirmative vote of a majority of Members present at the meeting in person or by proxy, with a quorum present, shall be required to transact any business that shall lawfully be brought before the Membership, unless a higher requirement is established by the Declaration, these Bylaws, the PCA or the NCA.

ARTICLE VI

DIRECTORS AND OFFICERS

6.1. **General Powers of the Board:** The Board of Directors (the "Board") shall exercise all of the powers of a nonprofit corporation given it by statute or vested in the Association by these Bylaws, the Declaration, the PCA and the NCA. The general business of and affairs of the Association shall be conducted by the Board. Specifically, but not by way of limitation, the Board has the authority to impose assessments, charges and fees against the Members and their Lots, as provided in the Declaration and in the PCA. The term "Board of Directors" or "Board" shall mean the same as "Executive Board" as defined in Section 47F-1-103(13) of the Act.

6.2. Number, Term and Qualifications of Directors.

6.2.1 The number of Directors of the Association shall be three (3), each of whom shall serve a term of two (2) years each. The Members shall elect two (2) of the three Directors (the "Elected Directors"). The two (2) elected Directors shall appoint the third (3rd) Director (the "Appointed Director").

6.2.2 Declaration of Candidacy. A Nominating Committee shall not be required. A candidate for an Elected Director position may declare his or her candidacy without the need for nomination by another Member.

6.2.3 Nominations or declarations of candidacy for any Elected Director position on the Board may also be permitted from the floor at any meeting at which an election is to be held. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

6.2.4 Election Procedures. Each Owner may cast all votes assigned to such Owner's Lot for each Elected Director position to be filled from each slate of candidates on which such Owner is entitled to vote. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled who receive the greatest number of votes shall be elected. Directors may be elected or appointed (as the case may be) to serve any number of consecutive terms.

6.2.5 Any Member in Good Standing shall be eligible to serve on the Board of Directors.

6.2.6 Both spouses of a married couple shall not both serve on the Board of Directors at the same time.

6.2.7 Any Elected Director may be removed by the Members. Any Appointed Director may be removed by the two Elected Directors.

6.2.6 In the event that a vacancy of an Elected Director or Appointed Director occurs on the Board of Directors, the remaining Directors shall, at the next Board meeting, fill the vacancy to serve the unexpired portion of the term for which the vacancy exists.

6.3 **Officers:** The Board of Directors shall elect from among the Directors a President and, at the Board's option, a Vice President, and shall elect from either the Directors or the Membership a Secretary and a Treasurer (or combination Secretary-Treasurer) of the Association, which officers shall be elected at the first meeting of the Board immediately following the annual meeting. The Board may establish such other positions as it deems necessary from time to time. The Board may remove any officer at any time with or without cause. The Board shall fill any vacant officer position as soon as practicable.

6.4 Duties of the Officers:

6.4.1 President. The President shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all the business and affairs of the Association. The President shall, when present, preside at all of the meetings of the membership and of the Board. The President in general shall perform all duties as may be prescribed by the Board of Directors from time to time.

6.4.2 Vice President: A Vice President may but need not be elected by the Board. If elected, and in the absence of the President, or in the event of death or inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions of the President. The Vice President shall perform such other duties as from time to time may be assigned by the President or by the Board of Directors.

6.4.3 Secretary: The Secretary shall have the following duties:

6.4.3.1 Keep the minutes of the Membership meeting and the minutes of the Board meetings in one or more books provided for that purpose;

6.4.3.2 Provide all required notices in accordance with the provisions of these Bylaws, the Declaration, the PCA and the NCA;

6.4.3.3 Keep, as custodian, the corporate records and Corporate Seal, if any;

6.4.3.4 Affix the Seal (if any) of the Association to all documents for which authorization has been given;

6.4.3.5 Keep a registry of the name, mailing address, telephone numbers (home, work and mobile), and email address of each Member; and

6.4.3.6 Perform all duties incident to the office of Secretary as set forth in these Bylaws or otherwise required by law or assigned by the Board from time to time.

6.4.4 Treasurer: The Treasurer shall have the following duties:

6.4.4.1 If required by the Board, provide, at the Association's expense, a bond for the faithful discharge of duties in such sums and with such surety or sureties as the Board may require.

6.4.4.2 Have charge and custody of and be responsible for all funds and securities of the Association;

6.4.4.3 Receive and give receipts for moneys in the name of the Association, and deposit such funds in depositories as the Board may determine;

6.4.4.4 If directed by the Board, arrange for the Association's books to be audited by a Certified Public Accountant at least once a year.

6.4.4.5 Prepare and present such reports as may be required by these Bylaws and applicable law; and

6.4.4.6 Perform all duties incident to the office of Treasurer as set forth in these Bylaws or otherwise required by law or assigned by the Board of Directors from time to time.

6.5. Meetings of the Board:

6.5.1 **Regular Meetings of the Board:** Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director at least seventy-two (72) hours prior to the meeting.

6.5.2 **Special Meetings of the Board:** Special meetings of the Board may be called by the President, and shall be called by the President or the Secretary and held within ten (10) days after written request for the same signed by two (2) Directors is delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours notice of such special meeting shall be given to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. The notice of a special meeting shall state the time, place and purpose of the special meeting. No business shall be transacted at a special meeting except that which is stated in the notice.

6.5.3. **Quorum:** A quorum at meetings of the Directors shall consist of a majority of the Directors.

6.6 **Board Action Without Meeting:** Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by all Directors.

6.7 **Telephonic or Video Participation in Meetings:** Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone, video conferencing, or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

6.8 Open Meetings; Closed Sessions.

6.8.1. Subject to the provisions of Section 6.8.2 of these Bylaws, all Board meetings shall be open to all Members, but attendees other than Directors may not participate in any discussion or deliberation unless a Director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

6.8.2. Meetings of the Board may be held in closed session, without giving notice and without the requirement that they be open to Members, in any of the following situations:
(1) No action is taken at the closed session requiring the affirmative vote of the Directors; or (2) The action taken at the closed session involves or includes personnel matters, advice from the Board's attorney which requires confidentiality in order to preserve the attorney-client privilege, pending litigation, or actions involving enforcement of the Act, the Articles, or these Bylaws.

6.9. **Execution of Documents.** The President or Vice President may sign any deeds, mortgages, deeds of trust, bonds, contracts, notes or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of these Bylaws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed. If necessary, the Secretary-Treasurer or any other officer of the Association may be authorized by the Board to sign documents for the Association.

6.10. **Management Agent.** The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making or decision-making authority or ultimate responsibility for those duties set forth in the PCA, the NCA, the Declaration and these Bylaws.

6.11 **Certification of Declaration Amendment; Recordation.** The President or Vice President of the Association is authorized to prepare, execute, certify and record amendments to the Declaration on behalf of the Association. All Declaration amendments shall be recorded with the Dare County Register of Deeds.

ARTICLE VII

FISCAL MANAGEMENT

7.1. **Depository.** The Board shall designate a depository for the funds of the Association, and may change such depository. Withdrawal of funds from such depository shall be only by checks signed by any officer of the Association or by any person designated by the Board. Any expenditure over \$5,000 shall, prior to the check being drawn, require the signature on the payment voucher of two officers and/or persons designated by the Board to sign checks.

7.2. **Fidelity Bonds.** Fidelity bonds may be maintained by the Association, in an amount determined by the Board, covering each director and officer of the Association, any employee or agent of the Association and any other person, handling or responsible for handling funds of the Association.

7.3. **Payment Vouchers.** Payment vouchers shall be approved by the Board, provided that the Board may delegate such authority to any officer or managing agent of the Association.

7.4. **Fiscal Year.** The fiscal year of the Association shall be from January 1 to December 31. The fiscal year shall be subject to change by the Board in its discretion.

7.5. **Books and Accounts.** Books and accounts of the Association shall be the responsibility of the Treasurer and shall be kept under the direction of the Treasurer. The books, records, and papers of the Association shall be subject to inspection by any Member upon fifteen (15) days prior written notice. The Declaration, the Articles and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies shall be made available for sale at a reasonable price.

7.6. **Reserve Fund.** The reserve fund for repairs and replacement shall be established by the Board and shall be funded thereafter by regular installments rather than by extraordinary special assessments if at all possible. The reserve funds shall be maintained only in such amounts as deemed necessary or desirable by the Board, subject, however, to the preceding sentence. To the extent maintained, funds therein shall be held in such accounts, and with such depositories as the Board, in its discretion, selects.

7.7. **Financial Statements to Members.** Pursuant to Section 47F-3-118(a) of the PCA, the Association shall make an annual income and expense statement and balance sheet available to all Members at no charge and within 75 days after the close of the fiscal year to which the information relates.

ARTICLE VIII

AMENDMENTS

8.1 **Amendments; Recordation:** These Bylaws may be amended or repealed and new Bylaws may be adopted. The proposed Bylaws amendment or repeal shall first be submitted to and approved by the Board. After Board approval, the proposed Bylaws amendment or repeal shall be submitted to the Members for consideration. The Members may adopt, amend or repeal the Bylaws by a vote of fifty-one percent (51%) or more of the total votes of the Association. All approved amendments to these Bylaws shall be recorded with the Dare County Register of Deeds.



8.2 **Certification of Bylaws Amendment.** The President or Vice President of the Association is authorized to prepare, execute, certify and record amendments to the Bylaws on behalf of the Association.

ARTICLE IX

IMPOSITION OF SANCTIONS; NOTICE AND HEARING

9.1 **Violations.** The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Declaration, Bylaws, Rules and Regulations, and Aesthetics Guidelines. To the extent specifically required by the Declaration, or by the PCA, the Board shall comply with the following procedures prior to imposition of sanctions.

9.2 **Notice.** The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person.

9.3 **Hearing.** If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Board in closed session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

ARTICLE X

GENERAL PROVISIONS

10.1 **Rules and Regulations.**

10.1.1 **Adoption.** The Board may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation, and use of the Common Elements so as to promote the common use and enjoyment thereof by members and occupants and for the protection and preservation thereof. In addition, the Board may adopt such rules and regulations as it deems reasonable and necessary with

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respect to Lots and Homesites to provide for the common good and enjoyment of all members and occupants, including, without limitation, the right to adopt such rules and regulations with reference to tenants and leases. In no event shall any rules or regulations be inconsistent or materially more restrictive than the provisions contained in the Declaration and these Bylaws with respect to leases or tenants.

10.1.2. Uniform Application. All rules and regulations shall be equally and uniformly applicable to all Members, occupants and Lots, but need not be equally and uniformly applicable if it is determined that such unequal and nonuniform application is in the best interest of the Association or if equal and uniform application is not practicable.

10.1.3. Copies Furnished. Copies of all such rules and regulations and any amendment thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to Members at the office of the Association. However, failure to furnish, or post, or make available, such rules and regulations shall not affect in any way their validity or enforceability.

10.2. Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceedings when not in conflict with the Declaration, these Bylaws, the Articles, the Act, or any statutes of the State of North Carolina applicable thereto. The Chairman of the meeting shall have the authority to appoint a parliamentarian.

10.3. Compliance with the Act; Conflict; Severability. These Bylaws are established in compliance with the PCA and NCA, as amended. Should any of the terms, conditions, provision, paragraphs, or clauses of these Bylaws conflict with any of the provisions of the PCA and/or the NCA, the provision of said PCA or NCA shall control unless the PCA or NCA permits these Bylaws to override the PCA or NCA, in which case these Bylaws shall control. In the case of any conflict between the provision of these Bylaws and the Declaration, the Declaration shall control. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

10.4. Compliance with Declaration. The Association shall be responsible and shall comply with all terms of the Declaration filed for the Planned Community including but not limited thereto those provisions dealing with the maintenance of insurance, repairs and maintenance of the Common Elements, assessments and rights of entry.

10.5. Notices.

10.5.1. Unless expressly provided to the contrary by the Act, notices required under these Bylaws shall be in writing and shall be either:

10.5.1.1. hand-delivered, in which case notice will be deemed to have been given upon receipt, or

10.5.1.2. mailed prepaid by United States mail or by a commercial overnight mail service to the mailing address of the intended recipient, such address being the address on file with the sender or the address designated by the recipient in writing, in which case notice will be deemed to have been given when sent, or

10.5.1.3. sent by facsimile to a facsimile phone number of the recipient on file with the sender, in which case notice will be deemed to have been given when sent, or

10.5.1.4. sent by any other electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the recipient, in which case notice will be deemed to have been given when sent.

10.5.2. Each party hereto shall be responsible for notifying the other of any change in its address within fifteen (15) days of such change.

10.5.3. All notices to the Association shall be hand-delivered or mailed to the Association's mailing address stated in either the Association's correspondence or publications, or in the corporate records of the North Carolina Secretary of State.

10.5.4. If any date upon which action is required under these Bylaws shall be a Saturday, Sunday or legal holiday, the date for such action shall be extended to the first regular business day after such date which is not a Saturday, Sunday or legal holiday.