

Prepared by and return to:  
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**RESTATEMENT AND AMENDMENT OF  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR HATTERAS ISLAND ESTATES**

THIS RESTATEMENT AND AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS for Hatteras Island Resort (the "Declaration") is made this 14<sup>th</sup> day of July, 2004, by Hatteras Island Resort, J.L.C, a North Carolina limited liability company, (hereinafter referred to as "Declarant") of 29 Fairway Drive, Southern Shores, NC 27949.

**PREAMBLE**

A. Declarant previously filed that Declaration of Covenants, Conditions and Restrictions for Hatteras Island Resort in Book 1510 at Page 352 on August 4, 2003 in the office of the Public Registry of Dare County, North Carolina (the "Initial Declaration") wherein Declarant stated the intent of development which included restoration and further development of those structures referred to as the "Villas" upon those lands described as: Parcels 3A, 3B and 3C on Exhibit "A" of the Initial Declaration.

B. That subsequent to the filing of the Initial Declaration, the existing Villas were destroyed or severely damaged by Hurricane Isabel. As a result of said destruction, the Declarant has abandoned development of the Villas and elected to proceed with the development of Hatteras Island Resort to include additional phases of Hatteras Island Estates.

7/14/04

C. The Declarant has the authority to adopt this Restatement and Amendment pursuant to Section 14.02 of the Initial Declaration.

NOW, THEREFORE, the Declarant hereby restates in its entirety that Declaration of Covenants, Conditions and Restrictions for Hatteras Island Resort as amended herein:

## RECITALS

### [STATEMENT OF PURPOSE]

A. Declarant is the owner of that property situated in the village of Rodanthe on Hatteras Island, North Carolina, more particularly described on Exhibit "A" attached hereto and incorporated by this reference (the "Property" or "Hatteras Island Estates").

B. Declarant's present intention is stated here for information of present interest only with respect to that Property made subject to this Declaration as hereinafter provided in Section 2.01, not as a warranty or representation of future fact as Declarant intends for Hatteras Island Estates (previously known as Hatteras Island Resort or the Estates at Hatteras Island) to be a community consisting of: Hatteras Island Estates consisting of single family residential lots to be developed in phases representing architectural styles similar to the principles associated with that vernacular known as traditional West Indies Architecture and first built and occupied by sea captains who traveled the triangular waters between Hatteras Island, the West Indies and Europe.

C. Declarant is also the Owner of that property situated to the East of Hatteras Island Estates known as the "Residual Parcel" consisting of a fishing pier and pier house. The Declarant as the Owner of the Residual Parcel has granted certain easements for ocean access to Owners within Hatteras Island Estates as hereinafter set forth, but the Residual Parcel is not subject to the provisions of this Declaration.

D. In order to provide for the preservation and value of Hatteras Island Estates and assurance that all improvements within Hatteras Island Estates and certain designated adjacent properties (the "Adjacent Properties") are in conformance with Architectural Guidelines, Declarant has made provisions for an Architectural Standards Committee (the "ASC") which shall be responsible for administering the Architectural Guidelines and any improvements to be constructed on the Property. Prior to any lot disturbance or construction of any type or for any purpose, including alterations or additions to existing structures, plans and specifications, detailing the nature, kind, shape, material and location, must be submitted for approval in writing by the ASC to the harmony of external design and location of the surrounding structures and topography.

E. The Adjacent Properties which are owned by Declarant and which shall be subject to the Architectural Guidelines as promulgated in Article VI are Lots: 15, 16, 31, 32, 43, 44, 45, 46, 47, 48 and 49 Revised Holiday Shores as shown on that Map or Plat recorded in Map Book 8,

7/14/04

Page 11, of the Dare County Registry and Lots: 1 and 2 Trade Wind Beaches as shown in Map Book 3, Page 15 of the Dare County Registry. The Owners of the Adjacent Lots shall not be members of the Association, shall not be subject to any assessments by the Association but shall only be subject to the Architectural Standards Provisions of Article VI.

E. To accomplish the objectives as referenced within these recitals, it is in the interest of Hatteras Island Estates for the Declarant to maintain a significant role in the implementation of each phase of Hatteras Island Estates and the Declarant has therefore retained numerous rights and will exercise controls over the Property throughout the developmental period.

NOW, THEREFORE, Declarant by this Declaration, declares that all that property formerly known as Hatteras Island Resort and now known as Hatteras Island Estates as more particularly described in Section 2.01 including the Adjacent Properties, and any other property annexed pursuant to Section 2.02 shall be held, sold, hypothecated, or encumbered, leased, rented, used, occupied and improved subject to the following covenants, restrictions, easements, liens and charges, all of which are declared and agreed to be in furtherance of enhancing and projecting the architectural styles and designs promulgated within the Architectural Guidelines, the spirit of community in Hatteras Island Estates and to enhance the value of properties which covenants, easements, and restrictions, shall run with the real property subjected to this Declaration as may be reasonably modified and amended from time to time in furtherance of the Statement of Purpose recited herein, all of which shall be binding on all parties, their respective heirs, personal representatives, successors, transferees and assigns, as well as occupants, guests and invitees having or acquiring any right, title or interest in Hatteras Island Estates.

#### Article I Definitions

Section 1.01. Definitions. When using this Declaration, unless the content shall prohibit or otherwise require, the following words set forth within this Article I shall have all of the following meanings and all definitions applicable to the singular and plural forms of such terms.

Section 1.02. "Act" refers to the North Carolina Planned Community Act as codified in Chapter 47F of the North Carolina General Statutes.

Section 1.03. "Additional Declaration" shall mean and refer to any Declaration of Covenants, Conditions and Restrictions filed in the office of the Register of Deeds of Dare County, North Carolina with regard to a certain phase, section or portion of the Property as more particularly described in Article II hereof.

Section 1.04. "Additional Property" shall mean and refer to any real property, other than the property described in Exhibit "A" attached hereto, which may be subjected to the Declaration

7/14/04

as more particularly set forth in Article II hereof. The Additional Property includes all real property currently owned by Declarant, and any adjacent or nearby property hereafter acquired by Declarant.

Section 1.05. "Adjacent Properties" shall mean and refer to properties owned by the Declarant which are not a part of Hatteras Island Estates but which properties are adjacent to Hatteras Island Estates and which properties shall be subject to the Architectural Standards of Article VI, said properties being more particularly described as follows: Lots: 15, 16, 31, 32, 43, 44, 45, 46, 47, 48 and 49 Revised Holiday Shores as shown on that Map or Plat recorded in Map Book 8, Page 11, of the Dare County Registry and Lots: 1 and 2 Trade Wind Beaches as shown in Map Book 3, Page 15 of the Dare County Registry. The Owners of the Adjacent Lots shall not be members of the Association and shall not be subject to any assessments by the Association

Section 1.06. "Architectural Standards Committee" ("ASC") shall mean and refer to that committee responsible for administering the Hatteras Island Estates and setting and approving all structural improvements, additions, modifications and changes within Hatteras Island Estates, unless the Declarant executes a Supplemental Declaration subjecting any portion of the Residual Parcel to be regulated by ASC.

Section 1.07. "Articles of Incorporation" shall mean the Articles of Incorporation of Hatteras Island Estates Association, Inc. as filed with the Secretary of State of North Carolina.

Section 1.08. "Assessments" shall mean and refer to all annual assessments, special assessments, individual assessments, and other fees and charges levied by the Association in accordance with the Governing Documents.

Section 1.09. "Association" shall mean and refer to Hatteras Island Estates Association, Inc., a North Carolina non-profit association.

Section 1.10. "Board" shall mean and refer to the Board of Directors of the Association.

Section 1.11. "Bylaws" shall mean the Bylaws of the Association as they may now or hereafter exist.

Section 1.12. "Commercial Site" or "Commercial Uses" shall mean that parcel of land designated as the Residual Parcel on the Subdivision Plat of Hatteras Island Estates intended for use as the site for improvements designed to accommodate commercial or business enterprises to serve residents and amenities of Hatteras Island Estates and/or the public, which parcel is not subject to the provisions of this Declaration.

Section 1.13. "Common Area" or "Common Property" shall mean and refer singularly or

7/14/04

collectively, as applicable, to all real property and improvements thereon or associated therewith, which is/are owned or leased by the Association (or by Declarant for later transfer, lease, or assignment to the Association); easements granted to or reserved by or on behalf of the Association (or the Declarant for later transfer or assignment to the Association); and other real property which has been designated as Common Area on any plat recorded in the Office of the Register of Deeds, Dare County, North Carolina by Declarant or by any other party entitled to subject Additional property in this Declaration, in a Supplemental Declaration, or in a deed or other written instrument, and also shall refer to all personal property owned or leased by the Association and designated as Common Area by the Declarant or the Association. The Common Area is for the common use, enjoyment or benefit of the Owners, and/or for the enhancement or protection of the Property or any part thereof, and may include, without limitation, active and passive recreational areas and facilities. All Common Area shall be subject to the terms and conditions of this Declaration. Common Area may also include, as determined by Declarant in its sole discretion, all water retention and detention ponds and areas, if any, including all stormwater facilities, structures and improvements associated therewith, required to be constructed, repaired, replaced or maintained on or near the Property or any portion thereof by the laws, rules or regulations of any governmental authority having jurisdiction thereof and which is required to handle stormwater runoff from any part or all of the Property. Notwithstanding the foregoing, in no event shall any portion of the Residual Parcel be considered part of the Common Area notwithstanding that the Residual Parcel may be dedicated to amenity uses for the benefit of all Owners within Hatteras Island Estates. The Common Area presently includes the roads within Hatteras Island Estates, the bridge connecting Phase I and Phase II of Hatteras Island Estates, all signs including the main signage, directional signage and any traffic signage, the pond, common walkways and lighting situated within Common Areas.

Section 1.14. "Common Expenses" shall mean and refer to (i) expenses of administration, maintenance, improvement, repair or replacement of Common Area or Common Property and/or rights of way, (ii) expenses declared to be or described as Common Expenses by the provisions of this Declaration, (iii) premiums for hazard, liability or other insurance as may be obtained by the Association, (iv) all other expenses incurred by the Association in carrying out its functions and duties under the Declaration, (v) charges for utility services used in connection with the Common Area and Improvements thereof and (vi) maintenance, repair and replacement of that easement granted for beach access including any necessary replacement and repair of the vegetated dune line along the ocean front of Hatteras Island Estates.

Section 1.15. "Declarant" shall mean and refer to Hatteras Island Resort, LLC, a North Carolina limited liability company, its successors and assigns in whole or in part.

Section 1.16. "Declarant's Rights and Obligations Period" refers to any and all privileges, powers, easements, exemptions, rights and duties reserved to the Declarant by the Governing Documents, and any reasonable amendments thereto related to the development of Hatteras Island Estates including the pursuit and furtherance of the recitals set forth within the Statement of Purpose. The Declarant's Rights and Obligations Period shall extend until September 15, 2014. The Declarant

7/14/04

may voluntarily elect an earlier termination of the Declarant's Rights and Obligations Period by giving written notice to the Association. During the Declarant's Rights and Obligations Period, the Declarant shall have all those Special Declarant's Rights defined by the Act and in addition those rights which shall include at a minimum: the right to make all appointments to the ASC, the right to appoint a majority of the Members to the Board of the Association and the right to approve any amendments to the Governing Documents.

Section 1.17. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Hatteras Island Estates as it may be amended and supplemented from time to time as herein provided.

Section 1.18 "Dwelling Unit" shall mean and refer to a portion of the Property, whether developed or undeveloped, intended for development, use and occupancy as an attached or detached dwelling for single family residential use. By way of illustration, but not limitation, each single-family, detached house on a Lot shall constitute a separate Dwelling Unit

Section 1.19 "Entrance Monument Easements" shall mean and refer to the easements reserved by Declarant and granted to the Association in Article X, Section 10.06 hereof over, under and across certain areas of the Property, for the installation and maintenance of entrance monuments and related improvements for the Property.

Section 1.20. "Governing Documents" refers to this Declaration, the Hatteras Island Estates Association, Inc. Articles of Incorporation and Bylaws of the Association.

Section 1.21 "Hatteras Island Estates" is the name of the Subdivision which includes Phase 1 only of Lots 1-9 and additional Phases or Property that may be annexed pursuant to Section 2.02.

Section 1.22 "Improvements" shall mean and include all buildings, storage sheds or areas, roofed structures, decks, patios, parking areas, exterior recreational areas, recreational equipment and facilities, mailboxes, exterior antennae, dishes or other apparatus to receive or transmit television or radio or microwave or other signals, loading areas, trackage, fences, walls hedges, mass plantings, poles, driveways, ponds, lakes, changes in grade or slope of a Lot or Dwelling Unit, silt preparation of a Lot or Dwelling Unit, landscaping, exterior clotheslines, swimming pools, tennis courts, signs, exterior illumination, changes in any exterior color or shape and any other exterior construction or exterior structure or other exterior improvement which may not be included in any of the foregoing. The definition of Improvements includes both original Improvements of all Lots and Dwelling Units and all later changes and additions to Improvements.

Section 1.23. "Landscaped Rights-of-Way" shall mean the medians and other areas within public or private street rights-of-way within or adjoining the Property which are designated as Common Area or Landscaped Rights-of-Way on any plat recorded in the Office of the Register of Dare County, North Carolina by Declarant or by any other party entitled to subject Additional

7/14/04

Property to the Declaration, and which shall be maintained by the Association as a Common Expense.

Section 1.24. "Lot" shall mean and refer to any numbered plot of land which is part of the Property, and which is part of the Property other than the Common Area, and which is shown on any plat in the Office of the Register of Deeds, Dare County, North Carolina which Declarant has recorded, caused to be recorded or approved for recordation. Declarant hereby reserves the right to reconfigure, at any time and from time to time without the consent of the Owners or Members of the Association, the boundaries of any Lot or Dwelling Unit owned by the Declarant and to thereby configure Lots or Dwelling Units, create streets, create additional Lots or Dwelling Units, eliminate existing Lots or Dwelling Units, create additional Common Area or reduce proposed Common Area not yet conveyed to the Association (provided that no such reduction violates any applicable ordinances of Dare County or other entity having governmental jurisdiction over such Common Area). Declarant's exercise of this right shall be evidenced by the recording of a revised map of the affected Lot, Dwelling Unit or Common Area. Upon the recording of any such revised map, each Lot or Dwelling Unit shown on the previously recorded map that has been revised by the new map shall cease to be a "Lot" or "Dwelling Unit" as defined herein and each revised Lot or Dwelling Unit as shown on the new map shall be "Lot" or "Dwelling Unit" as defined herein.

Section 1.25 "Maintain", "Maintenance" or any substantially similar term used in this Declaration, when applied to a power or duty of the Association shall mean and include, without limitation, the right to maintain, repair, replace, reconstruct, improve, clean, landscape, operate and use the improvement, property or other item which is the subject thereof.

Section 1.26 "Member" shall mean and refer to each Owner of a Lot or Dwelling Unit who is a member of the Association as provided in this Declaration.

Section 1.27. "Owner" shall mean and refer to the fee simple title to any Lot situated within Hatteras Island Estates. Notwithstanding any applicable theory of any lien or mortgage law, Owner shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any legal proceeding in lieu of foreclosure.

Section 1.28 "Phase I" shall mean and refer to Lots: 1 through 9 of Hatteras Island Estates.

Section 1.29 "Phase II" shall mean and refer to Lots: 10 through 18 of Hatteras Island Estates.

Section 1.30 "Phase III" shall mean and refer to Lots: 19 through 28 of Hatteras Island Estates.

Section 1.31 "Pier House" shall mean and refer to the Pier House access to the Rodanthe Fishing Pier situated within the Residual Parcel.

7/14/04

Section 1.32. "Plans" shall mean and refer to the complete drawings and specifications for any contemplated Dwelling or Dwelling Unit including, but not limited to those showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, driveway, parking, decorative landscape planting, floor plans and elevations therefore.

Section 1.33 "Property" shall mean the community of Hatteras Island Estates, and any additions thereto as are made subject to this Declaration by any Supplemental Declarations(s) under the provisions of this Declaration.

Section 1.34 "Sign" shall mean any writing, pictorial representation, emblem, flag, or any other figure of similar character which is (i) a structure or part thereof, or is attached to, painted on or in any other manner represented on a Dwelling Unit or any other structure (ii) used to announce, direct attention to, or advertise and (iii) visible from outside an Improvement.

Section 1.35 "Single Family Home" shall mean any detached home built on any vacant lot within Hatteras Island Estates.

Section 1.36 "Special Assessment" shall mean assessments levied in accordance with Article VIII Section 8.01(2) of this Declaration.

Section 1.37 "Subdivision Plat" shall mean that plat of Hatteras Island Estates designating Phase 1, recorded in Plat Cabinet F at Slide 46 in the Public Registry of Dare County, North Carolina.

Section 1.38 Phase.

Section 1.39. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects Additional Phases or Additional Property to this Declaration.

7/14/04



Article II  
Property

Section 2.01. Property Made Subject to this Declaration. The real property which shall be owned, held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration shall consist of the following:

- (a) All Lots shown on that plat entitled "Phase I The Estates at Hatteras Island Resort" which Map appears of record in the Office of the Register of Deeds of Dare County, North Carolina, in Plat Cabinet F, Slide 46 (the "Subdivision Plat");
- (b) Common Areas, all designated streets, signage and other Common Areas for Phase I;
- (c) The Adjacent Properties as described in Section 1.05, which Properties are subject only to the Architectural Control Provisions of Article VI.

Section 2.02. Annexation of Additional Property by Declarant within Ten Years. If prior to September 15, 2014, Declarant is the Owner of any real property which Declarant currently owns, or which Declarant hereafter acquires and which is contiguous or adjacent to the Property, which Declarant desires to subject to this Declaration (such real property being referred to herein as "Additional Property"), including Phases II and III of Hatteras Island Estates, it may do so by filing of and recording a Supplemental Declaration or additional Declaration which shall extend this Declaration to such Additional Property; provided however, that such Supplemental Declaration or Additional Declaration, as applied to the Additional Property covered thereby, may include such specific additional terms, covenants, conditions, restrictions, easements, charges and liens, not inconsistent with this Declaration, as may be set forth in such Supplemental Declaration. There shall be no requirement that any party other than the Declarant consent to, approve, or execute any such Supplemental Declaration or Additional Declaration.

Section 2.03 Other Annexations of Additional Property. If at any time Persons other than the Declarant desire to subject real property (also referred to as Additional Property) to this Declaration, such real property may only be subjected hereto if the owner thereof, and Declarant up to September 15, 2014, consents in writing. If after September 15, 2014, Declarant or any other Person desires to subject real property to this Declaration, the owner of such property to be annexed must consent in writing. All subjection to this Declaration, authorized by this Section 3 must be approved by the affirmative vote of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting of the Association at which a quorum is present. Upon such consent and/or affirmative vote, such Additional Property shall be subjected to this Declaration by the recordation in the Dare County, North Carolina Registry of a Supplemental Declaration or Additional Declaration

7/14/04

signed by the owner of such Additional Property, by Declarant (if such annexation occurs prior to September 15, 2014), and by the Association.

Section 2.04. Changes to this Declaration or Additional or Supplementary Declaration Requiring Declarant's Consent. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, for so long as there is a Class B Membership, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration, and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

### Article III Membership and Voting Rights

Section 3.01. Membership Each and every Owner of a Lot or Dwelling Unit within Hatteras Island Estates shall automatically become and be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling Unit, and the Board may make reasonable rules relating to the proof of ownership of a Lot or Dwelling Unit.

Section 3.02. Classes of Voting Members. Subject to the rights of Declarant reserved in this Section 3.02, the Association shall have two classes of voting membership as follows:

Class A. Class A Members shall be all Owners of Lots, with the exception of Declarant until such time as Declarant's Class B Membership is converted to Class A Membership as provided in this Article. Unless otherwise provided by a Supplemental or Additional Declaration as set forth in Section 2.04 hereof, a Class A Member shall be entitled to one (1) vote for each Lot or Dwelling Unit owned by such Class A Member at the time notice is given of the particular meeting at which Class A membership votes are eligible to be cast. Provided, when two (2) or more persons own or hold interests in any Lot or Dwelling Unit, all such Persons shall be Class A Members, and the one (1) vote for such Lot or Dwelling Unit shall be exercised as they, among themselves, determine, but fractional voting shall be prohibited and in connection with any particular vote no more than one Class A Membership (1) vote shall be cast with respect to each Lot or Dwelling Unit.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot or Dwelling Unit owned by the Class B Member at the time notice is given of the particular meeting at which the Class B votes are eligible to be cast.

The Class B Membership shall terminate and be converted to Class A Membership upon the happening of the first to occur of the following:

7/14/04

(a) when the total votes outstanding in Class A Membership equal the total votes outstanding in Class B Membership. Provided, however, and notwithstanding anything to the contrary that may appear herein or in the Declaration, if at any time prior to September 15, 2014, the Class B Membership terminates for the foregoing reason and thereafter, Declarant pursuant to Section 2.01 of Article II of the Declaration, annexes Additional property to the Declaration, such that, following such annexation, if votes are allocated to the Lots or Dwelling Units owned by Declarant at the rate of three (3) votes per Lot or Dwelling Unit Declarant's total outstanding votes would exceed the total outstanding votes of the Class A Members, the Class B Membership shall be reinstated until such time as it again terminates due to one of the events of termination stated herein. Prior to September 15, 2014, or the voluntary termination of the Class B Membership by Declarant, whichever first occurs, there shall be no limitation on the number of times the Class B Membership may terminate and be reinstated in accordance with the provisions of this paragraph (a); or

(b) voluntary termination by Declarant; or

(c) September 15, 2014.

Section 3.03. Voting, Quorum and Notice Requirements. Except as may be otherwise specifically set forth in this Declaration, the Articles or the Bylaws, the vote of the majority of the aggregate votes entitled to be cast by all classes of the Members present, or represented by legitimate proxy, at a legally constituted (duly called) meeting of the Association at which a quorum is present, shall be the act of the Members with respect to the matter that is the subject of such vote. The number of votes required to constitute a quorum shall be as set forth herein or in the Bylaws. Notice requirements for all action to be taken by the Members of the Association shall be as set forth herein or in the Bylaws.

Section 3.04. Termination of Membership. A Person's membership in the Association shall terminate automatically whenever such Person ceases to be an Owner, but such termination shall not release or relieve any such Person from any liability or obligation incurred under or in any way connected with the association of this Declaration during the period of such Person's ownership of a Lot or Dwelling Unit, or impair any rights or remedies which the Association or any other Member has with regard to such former member.

Section 3.05. Limited Common Property. With respect to matters specifically affecting Limited Common Property (as contrasted with matters affecting Common Property or the Association), only those Class A Members (with the Class B Member) who own Lots or Dwelling units in the particular section or phase of the Development to which such Limited Common Property relates shall be entitled to vote on and receive notice of matters affecting that particular Limited Common Property, and the quorum requirements with respect to any required votes affecting such Limited Common Property shall be based upon the number of Members entitled to

7/14/04

vote on such matters and not based upon the entire membership of the Association.

Article IV  
Property Rights in the Common Area

Section 4.01. Easement of Enjoyment. Subject to the provisions of this Declaration (and subject to the provisions of any Supplemental Declaration or Additional Declaration which may be applicable and not inconsistent herewith), every Owner shall have a right and easement of use and enjoyment in and to the Common Area, and every Owner of a Lot or Dwelling Unit in a phase or section of the Development which has Limited Common Area shall have a right and easement of use and enjoyment in and to such Limited Common Area, which rights and easements shall be appurtenant to and shall pass with the title to every Lot or Dwelling Unit; provided however, such easement shall not give such person the right to make alterations, additions or improvements to any part of the Common Area or Limited Common Area. Subject to the terms of the Governing Documents, any Owner may delegate such Owner's right of use and enjoyment in and to the Common Area or Limited Common Area to the members of such Owner's family, such Owner's tenant or contract purchasers who reside on the Owner's Lot or Dwelling Unit.

Section 4.02. Extent of Owners' Easement. The rights and easements of enjoyment created in Section 4.01 of this Article IV shall be subject to the following:

- (a) all provisions of this Declaration affecting such rights and easements, including without limitation those contained in this Article IV.
- (b) the right of the Association to prescribe and enforce regulations governing the use, operation and maintenance of the Common Area (including limiting the number of guests of Members who may use the Common Area).
- (c) the right of the Association to borrow money for the purpose of improving, repairing, replacing and maintaining the Common Area and facilities and/or the Landscaped Rights-of-Way and in connection with such borrowing to mortgage the Common Area, provided the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Association and the Owners hereunder (Note: the term "mortgage" when used in this Declaration also includes a Deed of Trust and any other type of security interest in real or personal property).
- (d) the right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;
- (e) the right of the Association to suspend the voting rights and the right to use recreational facilities of the Common Area if any, by an Owner (including his tenants) for any period during which any assessment against such Owner's Lot or Dwelling Unit remains unpaid;

7/14/04

and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations;

(f) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities that may be placed within the Common Area.

Section 4.03. Changes in Boundaries; Additions to Common Areas. Declarant expressly reserves for itself and its successors and assigns the right to reasonably change and realign the boundaries of the Common Areas and the Limited Common Areas and any Lots, including the realignment of boundaries between adjacent Lots or Dwelling Units owned by Declarant, provided that any such change or realignment of boundaries shall not materially decrease the acreage of the Common Areas and shall be evidenced by a revision of and/or addition to those plats of Hatteras Island Estates which shall be recorded in the Office of the Register of Deeds of Dare County, North Carolina. Except as provided herein, lots in the Estates may not be subdivided or separated into smaller lots or any portion of a lot separately conveyed.

Section 4.04. Damage or Destruction of Common Areas by Owner. If any Owner or any of their guests, tenants, licensees, agents, employees of Owner or his family damages any of the Common Areas as a result of negligence or misuse, the Owner hereby authorizes the Association to repair the damage. The cost of repair shall be the responsibility of that Owner and shall become an Individual Lot Assessment payable by the responsible Owner. In the event an Owner disputes either responsibility or the amount of damage claimed, then the Owner may request a hearing pursuant to the revisions of Section 7.14 (b) and any liability determined shall be an assessment secured by lien as allowed by the Act.

Section 4.05. Streets. The Association may make rules and regulations concerning driving and parking within Hatteras Island Estates including any designations of parking, the posting of speed limits and any other traffic signs to take reasonable measures to discourage excessive speed and encourage safe driving on the streets.

Section 4.06. Ingress and Egress. Notwithstanding anything to the contrary appearing in this Declaration, if ingress and egress to any Lot or Dwelling Unit is through any part of the Common Area, any conveyance or encumbrance of such part of the Common Area shall be subject to an easement for ingress and egress for such Lot or Dwelling Unit over and upon such portion of the Common Area as is designated for ingress and egress (by a public or private street or right of way) and shown on a recorded plat of such Common Area, Lot or Dwelling Unit affected thereby or created or reserved by Declarant in an instrument recorded in the Dare County, North Carolina Registry.

Section 4.07. Title to Common Areas. The Declarant shall retain the legal title to the Common Areas until such time as it has completed improvements, if any, thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same but,

7/14/04

notwithstanding any provision to the contrary herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey the Common Areas to the Association at its option anytime prior to September 15, 2014.

Section 4.08. Stormwater Management Improvements. The Association will be responsible for maintenance of any stormwater management swales, channels and check dam repairs. Each Association shall be responsible to insure that each owner within each neighborhood maintains his driveway. Such maintenance is to include removal of sediments within the swales and channels, restabilization of the swales and channels as needed, check dam repairs and upkeep of the vegetation cover on a periodic, as required basis. Each Dwelling Unit which is attached to another Dwelling Unit is hereby subject to an easement upon and across such other attached Dwelling Unit for the drainage and discharge of water from any storm drain to or toward downspouts situated on the other attached Dwelling Unit and the owner of such Dwelling Unit may not alter or obstruct such drainage or flow of water to the detriment of the other Dwelling Unit or the common areas of Hatteras Island Estates.

Section 4.09. Sales and Construction Offices. Notwithstanding any provisions of restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant and its successors and assigns during the Declarant's Rights and Obligations Period, the alienable and transferable right and easement in and to Hatteras Island Estates for the maintenance of signs, sales offices, construction offices, business offices and model Dwelling Units, together with such other facilities as may be reasonably required, convenient, or incidental to the completion and improvement of Common Areas, and/or sale of Lots, or any Additional Phases, for so long as Declarant owns any Lot or Dwelling Unit primarily for the purpose of sale.

## Article V

### Declarant's Reserved Rights and Obligations

Section 5.01. Duration of the Declarant's Rights and Obligations Period. The rights and obligations reserved for the benefit of the Declarant (the "Declarant's Rights and Obligations Period") shall extend until September 15, 2014. The Declarant, however, may elect to voluntarily terminate all or any portion of the Declarant's Rights and Obligations Period by expressing such election in writing to the Association.

Section 5.02. Right to Complete Hatteras Island Resort. The Declarant shall have the right to conduct all lawful activities required or related to the completion of the Hatteras Island Estates as such may be reasonably amended from time to time and as approved under the Ordinances of Dare County, North Carolina.

Section 5.03. Additional Phases. The Declarant hereby declares that all of that property described in the Exhibit "B" is subject to the Declarant's right to unilaterally subject such property

7/14/04

to this Declaration. For the duration of the Declarant's Rights and Obligations Period, the Declarant shall have the right to incrementally annex all or any portions of that property comprising the additional phases by executing one or more Supplementary Declarations.

Section 5.04. Governing Documents. During the Declarant's Rights and Obligations Period, the Association shall make no amendments to the Governing Documents or take any other action that may adversely affect the Declarant's interest without the Declarant's prior written consent.

Section 5.05. Easements. The Association shall take no action seeking to alter easements established in the Governing Documents by the Declarant, nor to prevent establishment of easements necessary to complete the Hatteras Island Estates.

Section 5.06. The Declarant's Representation on the Board. During the Declarant's Rights and Obligations Period, the Declarant shall have the right to appoint two of the three members serving on the Board of the Association which right of appointments may earlier be terminated as provided in Section 5.01 herein. The number of members of the Board and composition may not be changed during the Declarant's Rights and Obligations Period without the Declarant's written consent.

## Article VI Architectural Standards

Section 6.01. Purpose. Declarant desires to provide for the preservation of the values of Hatteras Island Estates with respect to any Dwelling Unit to be constructed on any portion of the Property. To that end, Declarant will establish an Architectural Standards Committee (the "ASC"). The purpose of the appointed ASC is to maintain standards as to appearance, shape, dimension, construction material, and color among other things, in order to establish a desirable consistency and harmony, among adjacent and surrounding structures and relative to location and topography.

Section 6.02. Advance Approval Required. All construction (which term shall include within its definition: staking, clearing, excavation, grading and other site work) or modification (except interior alterations not affecting the external structure or appearance of any building) including plantings or removal of plants, trees or shrubs shall not take place except in strict compliance with this Article, until the requirements below have been fully met and written approval of the Architectural Standards Committee ("ASC") has been obtained pursuant to Section 6.03 below. Unless approved in accordance with this Article, no structure, including, but not limited to: fences, porches, patios, decks, privacy walls, gates, pools, whirlpools or other pools, and awnings, shall be placed, erected or installed upon any Lot and/or Dwelling Unit.

7/14/04

Unless otherwise approved by the ASC, all improvements constructed on any portion of Hatteras Island Estates shall be designed by and built in accordance with the plans and specifications of an approved licensed architect and an approved licensed general contractor. For the purposes of this Article, an "Approved Licensed Architect" and "Approved Licensed General Contractor" shall mean an architect or general contractor properly licensed who has made application and has been approved by the ASC. The requirements and procedure for becoming an approved architect or general contractor shall be determined by the ASC.

This Article shall not apply to the activities of the Declarant, nor to construction of improvements or modifications to the Common Areas by or on behalf of the Association

This Article may not be amended during the Declarant's Rights and Obligations Period without the Declarant's prior written consent.

**Section 6.03. Architectural Standards Committee.** During the Declarant's Rights and Obligations Period, the Declarant retains the right to determine the composition and appointment of all members of the ASC. Thereafter, all appointments shall be made by the Board.

Responsibility for administration of the Architectural Guidelines and review of all applications for construction and modifications under this Article VI shall be handled by the ASC. The members of the ASC need not be Owners within Hatteras Island Estates and may but not need include: architects, engineers or similar professionals, whose compensation, if any, shall be established and remitted from time to time by the Declarant. The Declarant may establish reasonable fees to be charged by the ASC for review of applications hereinafter and may require such fees to be paid in full prior to review of any application.

**Section 6.04. Guidelines and Procedures.** The Declarant shall prepare the initial design and development guidelines and applications and review procedures (the "Architectural Guidelines") which shall be applicable to all construction activities within Hatteras Island Estates. The Architectural Guidelines may contain general provisions applicable to all of Hatteras Island Estates, as well as specific provisions which vary from the Estates to any Additional Property annexed to this Declaration depending upon the location, unique characteristics and intended use.

The ASC shall adopt the Architectural Guidelines and thereafter shall have sole and full authority to reasonably amend the Architectural Guidelines from time to time without the consent of the Association, provided said amendments are consistent with the Statement of Purpose set forth within this Declaration; however, any amendments during the Declarant's Rights and Obligations Period must have the prior written consent of the Declarant. Subsequent to the Declarant's Rights and Obligations Period, any amendments to the Architectural Guidelines may be either proposed by the ASC to the Association or may be proposed initially by the Association and any adoption thereafter must be by a majority vote of the Board.

7/14/04



The ASC shall make the Architectural Guidelines available to Owners and approved Architects and General Contractors who seek to engage in any development and construction in Hatteras Island Estates and all such persons shall conduct their activities in strict accordance with the Architectural Guidelines. A written document acknowledging receipt of the Architectural Guidelines shall be signed by the appropriate General Contractor prior to commencement of any construction activity. All Owners, Architects, General Contractors, sub-contractors, materialmen and their agents shall conduct their activities strictly in accordance with the Architectural Guidelines.

Any amendments to the Architectural Guidelines as may be reasonably adopted from time to time by the ASC in accordance with this Section 6.04 shall apply to construction and modifications commenced after the date of such amendment only, and shall not require modifications or removal of structures previously approved by the ASC once the approved construction or modification has commenced.

The ASC may promulgate from time to time detailed standards and procedures governing its area of responsibility and practice. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed construction and any modification, addition or alteration to any prior approvals shall be submitted to the ASC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, and as to location in relation to surrounding structures, topography and finishing grade elevation.

The plans to be submitted must include site plans which depict all access streets and walkways, pathways, and other exterior improvements, grading drainage plan, fill plan, if any, indicating runoff, foundation plan, exterior and lighting plan. The architectural drawings submitted must include total enclosed heated/air conditioned square footage, the floor plans, including an exact computation of the square footage of each floor and drawn to the scale of one quarter inch equals one foot, elevation drawings for all sides which shall indicate existing grade, fill and finished floor elevation, detailed drawings of typical wall sections and any other extra features, and a complete identification of colors and materials, including shingles, siding and color.

At time of submission, three sets of plans shall be submitted with the completed ASC application form. Construction of all improvements must be completed within nine months from the date the ASC grants an applicant approval.

Section 6.05. Non-Precedential Nature of Approvals. Each applicant acknowledges that the composition of the ASC will change from time to time and that decisions regarding aesthetic matters and interpretation and application of the Architectural Guidelines may reasonably vary from time to time. In addition, each applicant acknowledges that it may not always be possible to identify objectionable features of proposed improvements until the improvements are completed,

7/14/04

in which case it may be unreasonable to require changes to the Improvements previously approved, but the ASC may refuse to approve similar Improvements in the future. Approval of Improvements for any particular applicant or Dwelling Unit shall not be deemed a waiver of the right to withhold approval as to any similar Improvements subsequently submitted for approval.

Section 6.06. No Waiver of Future Approvals. The approval of the ASC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ASC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 6.07. Basis for Decision and Variance. The ASC shall approve or disapprove any application in its reasonable discretion, based primarily on adherence with the Architectural Guidelines; however, the ASC reserves the right to grant variances based on architectural merit and on existing landscape conditions. The ASC may also consider the nature, kind, shape, height of materials and location of the proposed improvements, harmony with surrounding structures and topography, and other factors including purely aesthetic considerations, which in the sole opinion of the ASC will affect the desirability or suitability of the construction.

Section 6.08. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the ASC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the ASC or the Association, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Dwelling Unit.

Section 6.09. Enforcement. Any construction, alteration or other work done in violation of this Article or in a manner inconsistent with the application approved by the ASC shall be deemed to be nonconforming. Upon written request from the ASC ("Notice of Nonconformity"), an Owner shall, at his own cost and expense, promptly remove the nonconformity and restore the property to substantially the same condition as existed prior to the creation of the nonconformity. In the event an Owner is in disagreement as to the Notice of Nonconformity, then the Owner has the right to request a hearing before a three-member panel designated by the ASC provided the Owner delivers written notice for request of hearing to the Secretary of the Association no later than ten (10) days from the date the Owner received the Notice of Nonconformity. Upon receipt of any request for hearing, the Secretary of the Association shall thereafter calendar a hearing not less than seven (7) days nor more than fifteen (15) days before the ASC. Subject to procedures as may be established by the ASC, any Owner may appeal the ASC's decision to the Board. The Board at its election may either calendar a further hearing or uphold, modify or reverse the decision of the three member panel of the ASC and said decision by the Board shall be final.

7/14/04

Upon issuance of the Notice of Nonconformity, all construction shall be stayed pending compliance by the Owner or resolution by the ASC or review and final decision by the Board. In accord, a stop-work order may be posted on the Owner's property by the ASC. Should an Owner fail to remove and restore any nonconformity as required hereunder, the Association or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs, together with the interest at the maximum rate then allowed by law, including reasonable attorney's fees allowed by the Act, may be assessed against the nonconforming Lot or Dwelling Unit and collected as an Individual Assessment pursuant to Section 8.04.

Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Hatteras Island Resort may be excluded by the Declarant (during the period of the Declarant's Rights and Obligations Period) from Hatteras Island Estates, subject to the notice and hearing procedures established by the ASC. In such event, neither the Association, its officers nor directors shall be held liable to any person for exercising the rights granted by this Section.

In addition to the foregoing, the ASC shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ASC.

## Article VII USE RESTRICTIONS

Section 7.01. Purpose. In order to preserve the natural setting and beauty of Hatteras Island Estates, and to establish and preserve a harmonious and aesthetically pleasing design pursuant to standards promulgated by the Association, and to protect and promote the value of all properties within Hatteras Island Estates each Lot and Dwelling Unit located within Hatteras Island Estates shall be subject to the restrictions set forth in this Article VII. Every grantee of any interest in Hatteras Island Estates (unless specifically exempted) by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article VII.

Section 7.02. General Provisions. All Properties within Hatteras Island Estates shall be used for only single family, non-transient residential purposes consistent with this Declaration and any reasonable amendments. The Association acting through its Board, shall have authority to make and to enforce standards and restrictions governing the use of Hatteras Island Estates. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees and licensees, if any Board. The Use Restrictions provided herein are not intended to interfere with the interior confines of Dwelling Units, except that the Association with approval of the Board may reasonably restrict or prohibit the following:

7/14/04

- (1) activities not normally associated with residential or home office. Except as otherwise provided herein, no business activity or trade of any kind (other than activities related to development of the Development by Declarant, installation and maintenance work by utility providers and persons responsible for street maintenance or replacement of a single-family residence or improvement or maintenance of a Lot or Dwelling Unit) shall be conducted on any Lot or within any Dwelling Unit, except that an Owner residing in a Dwelling Unit on a Lot may conduct business activities within the Dwelling Unit as long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door to door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, a hazardous or offensive use or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The term "business" and "trade" as used in this Section, shall be construed to have the ordinary, generally accepted meanings, and shall include without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provisions of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part time, such activity is intended or does generate a profit; or a license is required therefor;
- (2) activities that create a danger to the health or safety of the occupants of other Dwelling Units;
- (3) activities that generate excessive noise or traffic; and
- (4) activities that create unsightly conditions visible outside the Dwelling Unit.

Section 7.03. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any portion of the Property or in any Dwelling Unit except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes, that they do not create a nuisance (in the judgment of the Board), such as, but without limitation, by number, noise, odor, damage or destruction of property or refuse and further provided that they are kept and maintained in compliance with (i) all laws and ordinances of the State of North Carolina, Dare County, or other applicable governmental entity relating thereto; and (ii) such rules and regulations pertaining thereto as the Board may adopt from time to time. In no event shall more than three dogs and/or three cats be regularly kept on any Lot or in any Dwelling Unit, except for newborn offspring of household pets which are under nine (9)

7/14/04

months of age. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit or require the removal of any dog or animal, which after consideration of factors such as size, breed, disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard. Every person owning or having possession, charge, care custody or control of any dog shall keep such dog exclusively upon his own Lot; provided however, that such dog may be part of the Lot if it is under the control of a competent person and restrained by a chain, leash or other means of adequate physical control.

**Section 7.04. Antennae.** No exterior antennae, earth satellite station, microwave dish or other similar improvements may be constructed, placed, maintained or allowed to remain on any Lot or Dwelling Unit (or on any Improvement) other than a "Reception Device". As used herein, a Reception Device shall refer to a satellite dish or other device designed to receive video programming or antenna designed to receive over-the-air broadcast signals from local television stations. The use of a Reception Device is allowed, but will be limited as follows: (i) a Reception Device thirty-nine (39) inches or smaller in diameter is allowed, and Reception Devices larger than one meter are prohibited; (ii) Reception Devices must be installed on the Dwelling Unit in an inconspicuous location (so long as the quality of reception is not impaired); (iii) for safety purposes, no Reception Device may be installed that would extend higher than twelve (12) feet above the roofline of the Dwelling Unit without approval from the Architectural Control Committee; (iv) for safety purposes, Reception Devices shall not be installed closer to an adjacent Dwelling Unit than the total height of the Reception Device; (v) the Owner of the Dwelling Unit upon which the Reception Device is located shall be solely responsible for the maintenance, repair, upkeep and all other costs associated with the Reception Device, including any medical expenses incurred by any person injured by the use of such Reception Device; and (vi) the Reception Device should be painted an appropriate color to match the surrounding environment if it would not unreasonably increase the cost of the Reception Device. If any provision of this Section 7.04 is found to be invalid, the remainder of these provisions shall remain in full force and effect.

**Section 7.05. Attachments.** No permanent attachments of any kind or character whatsoever shall be made to the roof or exterior walls of any Dwelling Unit unless such attachments shall have been first submitted to and approved by the Architectural Control Committee; provided, however, "Reception Devices" (as defined in Article 7.04 herein) may be attached to the roof or exterior wall of a Dwelling Unit without approval by the ASC. No outdoor clotheslines shall be allowed on any Dwelling Unit or Lot. Window air-conditioning units are not allowed. All components of HVAC systems located outside a Dwelling Unit must be screened by lattice and planted vegetation, which vegetation must be maintained.

**Section 7.06. Lawn Furniture and Statues.** No lawn furniture or decorative items, such as statuettes or renderings of animate or inanimate objects shall be maintained in the front or side

7/14/04

yards of any Lot or Dwelling Unit unless shielded from view by landscaping, a fence or a wall approved in advance in writing by the ASC.

Section 7.07. Nuisances, Unlawful Use and Quiet Enjoyment. No nuisance or immoral, improper, offensive or unlawful use shall be permitted to exist on any property within Hatteras Island Estates. All laws, building codes, orders, rules, regulations or requirements of any governmental agency having jurisdiction shall be complied with. No portion of Hatteras Island Estates shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of adjacent Dwelling Units. Exterior loud speakers are prohibited on individual lots, except in pool areas and exterior decks.

Section 7.08. Pest-Control. All Dwelling Units must be subject to an agreement for periodic pest-control. All pest-control measures must be environmental friendly with the lowest chemicals allowed and any measures which can be performed by organic means shall be the method of treatment. Further, organic pest control measures if available must be performed on the soil of a Lot prior to commencement of any construction.

Section 7.09. Recreational Vehicles. Neither a motorboat, houseboat or other similar waterborne vehicle, nor any airplane, nor any travel trailers, other trailers or "camper" vehicles may be maintained, stored or kept on any portion of the Property, except in (i) enclosed garages or (ii) in area(s) specifically approved and with screens or covers as specifically approved by the Declarant or ASC (in the absence of approval or disapproval by Declarant).

Section 7.10. Rental of Dwelling Units. The individual renting of Dwelling Units within Hatteras Island Estates is allowed.

Section 7.11. Rules of the Association. All Owners and occupants of Lots or Dwelling Units shall abide by all rules and regulations adopted by the Association from time to time. The Board and the Declarant for so long as there remains a Class B Membership shall have all the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or the Declarant for all damages and costs, including reasonable attorneys fees.

Section 7.12. Site Line Limitations. No fence, wall hedge or shrub planting which obstructs sight lines at elevations between two and six feet above roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement.

7/14/04

Section 7.13. Time Sharing. No time-share ownership of property is permitted in Hatteras Island Estates. For purposes of this section, the term "Time-Share Ownership" shall mean a method of ownership of an interest in a property under which the exclusive right of use, possession or occupancy of the property circulates among the various Owners on a periodically reoccurring basis over a scheduled period of time.

Section 7.14. Compliance Provisions.

(a) Owner's Responsibility. Each Owner and Owner's family members, guests and tenants shall conform and abide by the Covenants contained in this Declaration and any Rules and Regulations which may be adopted from time to time by the Association. Each Owner shall be responsible for assuring such compliance, and any violation by family members, guests or tenants may be considered to be a violation by the Owner.

(b) Notice, Hearing and Fines. Unless otherwise provided (as in Articles VI and Article IX), any Owner who is believed to be in violation of this Declaration or any Rules and Regulations adopted by the Board, shall be sent a "Notice of Violation" setting forth the violation, any requested corrective action, and if applicable, notice of any proposed suspension of privileges within Hatteras Island Estates and any fines which may be assessed. Upon receipt of a Notice of Violation, the Owner may either take the corrective action set forth within the Notice of Violation or in the event an Owner is not in agreement with the terms of the Notice of Violation, then prior to any proposed suspension or assessment of any fines, the Owner has the right to a hearing before the Board provided the Owner delivers written notice for request of hearing to the Secretary of the Association no later than ten (10) days from the date the Owner received the violation. Upon receipt of any request for hearing, the Secretary of the Association shall thereafter calendar a hearing not less than seven (7) days nor more than thirty (30) days before the Board. If it is determined that the Owner is in violation and a fine shall be imposed, a single fine not to exceed \$100.00 may be imposed for the violation up to the time of the hearing and without further hearing, for each day after the decision by the Board that a violation has occurred. In the event it is determined that privileges are to be suspended, the suspension may continue without further hearing until the violation or delinquency is cured. All costs, together with interest at the maximum rate permitted by law, including reasonable attorney fees as allowed by the Act may be assessed against the Owner's property and collected as an Individual Assessment pursuant to Section 8.04. Notwithstanding the enforcement provisions provided herein, the primary goal is not to punish but to conciliate and resolve problems. The Board may suggest or approve agreements and withhold the agreement of paying a fine if the agreement is honored. Any fines levied shall be charged against the Owner's property as an Individual Assessment pursuant to Section 8.04. The provisions provide herein for notice and hearing only apply to those matters which could result in an individual assessment being levied and do not apply to any other type of assessments.

7/14/04

(c) Additional Remedies. All remedies listed in this section are non-exclusive and may be applied cumulatively.

## VIII Assessments

Section 8.01. Creation of Assessments, Personal Obligation and Lien. Each owner, other than the Declarant of any Lot or Dwelling Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to all the covenants, easements and restrictions of this Declaration and to pay to the Association:

- (1) annual assessments or charges;
- (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) individual assessments levied against an Owner to reimburse the Association for extra costs for maintenance and/or repairs caused by the failure of such Owner to maintain such Owner's individual Lot or Dwelling Unit and Improvements thereon, or for damage to or destruction of Common Area by the Owner or the Owner's guests, tenants, licensees, agents, or family members, all of such assessments and charges to be fixed, established and collected as hereinafter provided; together with the costs, fees and expenses including reasonable attorney's fees (the "costs of collection") incurred by the Association incidental to the enforcement of any Rules and Regulations, collection of assessments or collection of damages or charges arising under the Governing Documents. All assessments together with interest and late payment fees, and any costs of collection shall be a charge on the land and shall be a continuing lien upon the Lot or Dwelling Unit 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 a personal and continuing obligation of the person or persons jointly and severally, who is (are) the Owner (s) of such Lot or Dwelling Unit at the time when the assessment fell due.

An Owner's personal obligation for payment of such assessments shall not pass to such Owner's successors in title unless expressly assumed by them, but the lien against such Owner's Lot or Dwelling Unit as established in this Declaration shall continue in effect (unless terminated as otherwise provided herein). No Owner shall be exempt from liability for any assessment provided for herein by reason or non-use of such Owner's Lot or Dwelling Unit or the Common

7/14/04



Area. This Declaration shall, pursuant to Section 6-21.2 of the North Carolina General Statutes, constitute an evidence of indebtedness with respect to the obligation to pay each assessment provided for herein.

Section 8.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, security, safety and welfare of the residents of Hatteras Island Estates and in particular for:

- (a) The improvement, maintenance and replacement of the Common Areas (including, without limitation, the landscaped right-of-way);
- (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 Areas, 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 Areas, the procurement and maintenance of insurance related to the Common Areas, its facilities and use in accordance with the Governing Documents, the employment of counsel to represent the Association if necessary, and such other requirements as may be necessary to perform all of the aforesaid functions and purposes;
- (d) Carrying out the purposes and duties of the Association as stated in its Articles and Bylaws and as stated in this Declaration.

Without limiting the generality of the above-described purposes, the assessments levied by the Association may be used for the acquisition, construction, improvement (including landscaping and planting) and maintenance of any common facilities located or to be located in the Common Area and Landscaped Rights of Way, and any landscaping easement areas or Entrance Monument easement areas as shall be indicated on the recorded plats of Hatteras Island Resort.

Section 8.03. Initial Maximum Annual Assessment and Annual Assessment. The initial maximum annual assessment for the calendar year 2004 shall be as follows:

<u>Owner Members</u>	<u>Regular Semi Annual Assessment</u>
Per vacant Lot	\$ 450.00
Per vacant Lot owned over 18 months	\$ 600.00
Per single family home in the Estates	\$ 600.00

The maximum annual assessment for each successive calendar year thereafter shall

7/14/04

be established by the Board subject to Article VIII. Within thirty (30) days after adoption of the yearly budget, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. A quorum need not be present at such meeting, and the budget is ratified unless at that meeting the Owners entitled to exercise fifty-one percent (51%) of the votes in the Association reject the budget. In no event may the Board or membership of the Association decrease the amount of the annual assessment for any calendar year from the amount of the annual assessment for the previous calendar year.

Section 8.04. Individual Assessment. An Individual Assessment may be levied against any Owner to reimburse the Association for costs incurred in bringing the Owner and/or such Owner's Lot or Dwelling Unit into compliance with the Governing Documents, provided such Individual Assessment may only be levied on the affirmative vote of the Board, after notice of an opportunity for hearing has been provided to the Owner pursuant to the applicable provisions of either Section 6.09, Section 7.14 or Section 9.03.

Section 8.05. Emergency Assessments. In addition to the annual assessments, special assessments, and individual assessments authorized herein, in the event of an "Emergency" (as hereinafter defined), the Board, on behalf of the Association, in the Board's sole discretion, may levy an emergency assessment for the purpose of taking preventative, protective, stabilizing, or remedial actions to protect the Common Area or any Improvements located thereon, and to further reconstruct, repair or replace any portion of the Property or Improvements following such Emergency. An "Emergency" for purposes of this Section 8.05 includes, but is not limited to, floods, hurricanes, tornadoes, fires, acts of God or other naturally occurring phenomena. An emergency assessment shall be due and payable as established by the Board.

Section 8.06. Rate of Assessments.

(a) Except as otherwise set forth herein, assessments other than individual assessments must be fixed at a uniform rate for all Lots. Annual Assessments other than individual or special assessments may be collected on a monthly, quarterly, annual or other basis, as determined by the Board, and may be collected in advance. The Board shall have the power at any time and from time to time, in its sole discretion and upon such terms and conditions as the Board deems appropriate, to allow percentage discounts to Owners who pay assessments earlier than would otherwise be required for such payments; provided, however, all such discounts shall be made available to and applied uniformly to the Owners of all Lots that are subject to the assessment to which the discount applies.

(b) Notwithstanding anything to the contrary that may appear in this Declaration, all Lots and Dwelling Units owned by Declarant shall be exempt from annual, special, and individual assessments, until the initial sale of such Lot or Dwelling Unit to a third party.

7/14/04

Section 8.07. Commencement of Assessments: Establishing the Amount: Due Dates.

The annual assessment shall commence with respect to the Dwelling Units and Lots in any Phase on the first day of the month immediately following the month in which the first Lot or Dwelling Unit in such phase or section of Hatteras Island Estates conveyed to the Owner by Declarant, and the amount of the first annual assessment applicable to the Lot or Dwelling Unit shall be prorated in accordance with the number of months remaining in the calendar year on and after it becomes applicable to the Lot or Dwelling Unit. For the purposes of this Section 8.07 only, in establishing the time when an annual assessment, an individual assessment or special assessment is applicable to a Lot or Dwelling Unit, the term "Declarant" shall include any Person to whom the Declarant or such Person has conveyed an undeveloped portion or Phase of Hatteras Island Estates for development by such Person into Lots or Dwelling Units (it being contemplated by Declarant that there may be instances in which a certain section or phase of the Property is conveyed to another Person who will develop same into residential Lots or residential property), and who has been designated as such by the Declarant. A special assessment and/or individual assessment shall be applicable to each Lot or Dwelling Unit subject to this Declaration at the time such assessment is established. The Board shall establish the amount of the annual assessment for the ensuing calendar year at least thirty (30) days in advance of the beginning of such year, and, if the amount of the annual assessment changes from the amount for the current year, the Board shall cause written notice of the new annual assessment to be sent to at least one of the Owners of each Lot or Dwelling Unit subject to the assessment. Subject to any limitations contained in the Governing Documents and applicable laws, the Board is empowered at any time and from time to time to establish the due dates and penalties for late payment of annual and special assessments. The failure of the Board to establish the amount of any annual assessment as required herein shall not be a waiver or modification in any respect of the provisions of this Declaration, or a waiver of the Board's right to establish the annual assessment at any time during the calendar year to which it is applicable, or a release of any Owner from the obligation to pay the assessment or any installment thereof for that or any subsequent year, and the annual assessment established for the immediately preceding calendar year shall continue in effect until the Board has established the new annual assessment.

Section 8.08. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner: The Lien, Remedies of Association. If the assessments are not paid on the date due (being the dates referred to in Section 8.07 of this Article), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot or Dwelling Unit. The personal obligation of the Owner to pay such assessment shall remain his personal obligation for the statutory period and shall be binding on any successor in interest.

If the assessment or assessments are not paid within thirty (30) days after the delinquency date, the assessment or assessments shall bear interest from the date of delinquency at the rate of interest set by the Board, not to exceed the maximum rate permitted by law, and the Board acting

7/14/04

on behalf of the Association may authorize its officers to bring appropriate civil action against the Owner personally obligated to pay the same or to foreclose the lien against any such Lot or Dwelling Unit and there shall be added to the amount of such assessment, the costs of such action and reasonable attorney's fees as allowed by the Act or other cost incurred by the Association. In the event a judgment is obtained against any Owner for such assessments, such judgment shall include interest on the assessment at the maximum rate permitted by law and a reasonable attorney's fee as allowed by the Act together with the costs of the action.

Section 8.09. Subordination of the Lien to Mortgages or Deeds of Trust. The lien of the assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Lot or Dwelling Unit, subject to assessment. The subordination shall not relieve any Lot or Dwelling Unit from liability for any assessments now or hereafter due and payable, but the lien thereby created shall be secondary and subordinate to any first mortgage or deed of trust as if said lien were a second mortgage or deed of trust, irrespective of when such first mortgage or deed of trust was executed and recorded.

Section 8.10. Exempt Property. All Common Area, Limited Common Area, all property of the Residual Parcel and real property owned by governmental entities, and all Lots, Dwelling Units, and other portions of the Property owned by Declarant, shall be exempt from the assessments and liens for same created herein. Provided, however, no real property or improvements subject to this Declaration and occupied and used for residential dwelling purposes shall be exempt from such assessments and liens, other than Lots and Dwelling Units owned by Declarant.

Section 8.11. Declarant's Obligations for Assessments. The Declarant's obligation for assessments on unsold Lots or Dwelling Units subject to this Declaration will be limited to the difference between the actual operating costs of the Association, excluding reserves on the Common Areas, and the assessments levied on Owners who have closed title on their Lots or Dwelling Units. In no event, however, will the Declarant be required to make a deficiency contribution in any amount greater than it would otherwise be liable for if it were paying assessments on unsold Lots or Dwelling Units. After the Declarant's Rights and Obligations Period, Declarant shall pay assessments as would any other Owner for each Lot or Dwelling Unit owned by the Declarant.

Section 8.12. Certificate of Payment. The Secretary of the Association shall furnish a certificate stating whether any assessments are owed by an Owner. Such certificate may be relied upon by a good faith purchaser or mortgagee as conclusive evidence of payment of any assessment therein stated to have been paid.

7/14/04

Article LX  
Maintenance

Section 9.01. Responsibilities of Owners. Each Lot or Dwelling Unit Owner shall be responsible for all maintenance and repair of his Lot and/or Dwelling Unit together with all other improvements thereon or therein and all landscaping of grounds on and within the Lot. Each owner shall be responsible for maintaining his Lot in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all improvements and other structures and all trees, shrubs, hedges, walkways, driveways and other landscaping consistent with the site plan and landscape plan approved by the ASC, unless said maintenance repair and replacement has been specifically delegated by the Association as provided in Section 9.02 herein.

Section 9.02. Responsibilities of the Association.

(a) The Association shall maintain and keep in good repair the Common Areas, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, all landscaping and other flora, structures, any private streets, pedestrian pathways, access walkways, all stormwater management facilities (including without limitation, ponds, basins, storm drainage pipes, or oil grit separators, drainage areas and underground facilities, if any) and any recreational facilities which become available for use as determined by the Declarant whether or not title to such facilities has been conveyed to the Association, and such portions of any additional property included within the Common Areas as may be dictated by this Declaration, Supplemental Declaration. All costs associated with maintenance, repair and replacement of the Common Areas shall be a Common Expense to be allocated among all Owners as part of the Common Assessment.

Section 9.03. Compliance. The Association shall have the right but not the obligation to cure any maintenance deficiencies of an Owner (including but not limited to external care of windows, siding and roofing) in which event the Association shall give a "Notice of Maintenance" to the Owner setting forth those matters in need of repair and requesting the same be addressed and said repairs completed within thirty (30) days from the date of said notice. Upon timely written request by an Owner to the Secretary of the Association, the ASC shall give consideration to any reasonable request by the Owner for an extension to complete said repairs beyond thirty (30) days. In the event an Owner is in disagreement as to the need for repairs or corrections requested within the Notice of Maintenance, then the Owner has the right to request a hearing before a panel of three Members designated by the ASC provided the Owner delivers written notice for request of hearing to the Secretary of the Association no later than ten (10) days from the date the Owner received the Notice of Maintenance. Upon receipt of any request for hearing, the Secretary of the Association shall thereafter calendar a hearing not less than seven (7) days and no more than thirty (30) days before the ASC. Subject to procedures that may be established by the Association, any Owner may appeal the ASC's decision to the Board. The

7/14/04

Board in its election may either calendar a further hearing or uphold, modify or reverse the decision of the three member panel of the ASC and said decision by the Board shall be final. Should an Owner fail to make those repairs as set forth within the Notice of Maintenance, then the Association or its delegate agent shall have the authority to enter upon the Owner's property to repair and restore the Lot and/or Dwelling Unit and if necessary, make exterior repairs. All costs together with interest at the maximum rate permitted by law, including reasonable attorney fees as allowed by the Act may be assessed against the Owner's property and collected as an Individual Assessment pursuant to Section 8.04.

## Article X EASEMENTS

Section 10.01. Easement Reserved by Declarant. Declarant, for so long as there is a Class B Membership, and then the Association, for itself, its successors and assigns, and its agents, contractors, and employees reserves a perpetual, alienable, and releasable easement on, over and under the Property (and including all Dwelling Units, Lots, Common Property and Limited Common Property) for installation, maintenance, repair, replacement, use, operation and removal of utilities (including, without limitation, electric, natural gas, telephonic and cable television) and related appurtenances and equipment (including without limitation, wires, poles, pipes, transformer boxes and conduits), stormwater and drainage facilities and soil and water impoundments. Provided, however, no easement hereby reserved shall be applicable to any portion of a Lot or Common Area or Limited Common Area used as building site or approved use as building site by the Architectural Control Committee. Full right of ingress and egress shall be had by Declarant at all times over the Lots and Dwelling Units or Common Areas or Limited Common Areas (other than the portions thereof used or approved as building sites) for the installation, use, operation, than the portions thereof used or approved as building sites) for the installation, use, operation, Maintenance, repair, replacement or removal of any such utility, drainage facility or impoundment, together with the right to remove any obstruction that may be placed in any easement that would constitute interference with the use of such easement, or with the use, installation, Maintenance, repair, replacement, removal or operation of same. Assignees to whom Declarant reserves the right to assign and convey, in whole or in part, the easements reserved by it hereunder shall include, without limitation, the Association and one or more governmental entities or public utility companies. Provided, however, neither the foregoing reservation of easement rights nor any similar reservation of easement rights contained in this Declaration shall create or impose any obligation upon Declarant, or its successors and assigns, to provide or maintain any such utility, drainage facility or impoundment, which if not otherwise maintained, shall be maintained by the Association.

### Section 10.02. Easement Reserved for The Association.

- (a) Full rights of ingress and egress shall be had by the Association at all times over

7/14/04

and upon each Lot or Dwelling Unit for the Maintenance and repair of each Lot or Dwelling Unit in accordance with the provisions hereof and for the carrying out by the Association of its rights, powers duties and obligations hereunder; provided that any such entry by the Association upon any Lot or Dwelling Unit shall be made with a minimum inconvenience to the Owner as reasonably practicable, and any damage caused as a result of the negligence of the Association's employees or agents shall be repaired by the Association at the expense of the Association.

(b) In addition to the foregoing, and in order to implement effective and adequate erosion control, the Association, and its contractors, employees and agents, shall have the right to enter upon any portion of any Lot or Dwelling Unit before and after Improvements have been constructed thereon for the purpose of performing any grading or landscaping work or constructing, repairing, replacing, using and maintaining erosion control devices; provided however, no such activities shall interfere with any permanent Improvements constructed on any such Lot or Dwelling Unit (which Improvements have been approved by the ASC). If the need for erosion control results from the construction of Improvements on any portion of an Lot or Dwelling Unit or any excavation, grading, removal, reduction, addition or clearing of any Lot or Dwelling Unit or portion thereof, the cost of any such work performed by the Association for the purpose of implementing effective and adequate erosion control shall be assessed against the Owners of Lot or Dwelling Unit on which such corrective action is necessary on a Lot or Dwelling Unit, prior to exercising its right to enter upon such Lot or Dwelling Unit and performing any grading or landscaping work or constructing or maintaining erosion prevention devices, the Association shall give the Owner of such Lot or Dwelling Unit written notice of and the opportunity to take the corrective action specified in the notice, the Association may then exercise its right to enter upon the Lot or Dwelling Unit and take or complete the necessary corrective action.

Section 10.03. Easement Reserved for Governmental Entities and Public Utilities. An easement is hereby established for applicable governmental entities and municipal, state or public utilities serving the Development and their agents and employees, over all Lots, Dwelling Units, Common Areas hereby or hereafter established (and approved if required), for the purpose of setting, removing, repairing, maintaining and reading utility meters, maintaining, repairing and replacing streets, utilities, utility or drainage connections, and acting for other purposes consistent with the public safety and welfare, including without limitation, police and fire protection, garbage collection, and mail delivery, the rights granted by such easements to be exercised in a reasonable manner and at reasonable times (except in the case of an emergency).

Section 10.04. Easements Shown on Recorded Maps. Declarant, for itself, its successors and assigns (including, without limitation, governmental entities and the Association), and in addition to those easements reserved in this Declaration, hereby reserves easements in the locations and for the purposes shown and indicated on all maps of Lots or Dwelling Units subject to this Declaration that are recorded in the Dare County, North Carolina Registry, and for the purpose of exercising and implementing such easement rights, Declarant and the Association shall

7/14/04

have the right of ingress, egress and regress over and upon those easement areas. The rights reserved by this Section 10.04 include, without limitation, the right to construct, alter, place, maintain, repair replace and use in the easement areas identified on such maps, all Improvements deemed necessary, in the reasonable discretion of the Declarant or the Association, for the full exercise of such easement.

Section 10.05. Easements for Stormwater Drainage Facilities over the Residual Parcel. Declarant currently owns all of that Property known as Hatteras Island Estates Residual Parcel. Declarant, as Owner of the Residual Parcel, does hereby grant and establish, to and for the benefit of the Owners and the Association and for the benefit of the Residual Parcel reciprocal easements for the drainage of Stormwater runoff through and into such stormwater drainage facilities, including drainage, swails, conduits, pipes, and detention ponds, as are constructed and located on the Residual Parcel and Hatteras Island Estates, from time to time. The Owner of the Residual Parcel shall have the exclusive right to determine the location and placement of such facilities, subject to the requirements of Dare County and/or any other governmental authority having jurisdiction, and neither the Association nor any Owner shall have any right with respect thereto. The Owner of Hatteras Island Estates Residual Parcel shall be responsible for the maintenance of any such drainage easements, facilities and ponds that are located within Residual Parcel.

Section 10.06. Entrance Monuments. Declarant has the right but not the obligation to install an entrance monument and related improvements ("Entrance Monument") on any Lot which is specified as a Lot upon which an Entrance Monument may be established in any Supplemental Declaration which is filed in the Dare County Public Registry. Declarant hereby reserves for the benefit of Declarant and grants to the Association an easement over, under and across such Lot(s) for the installation and maintenance of such Entrance Monument.

Section 10.07. Encroachment Easements for Improvements Constructed by Declarant. Declarant does hereby grant, declare, and establish easements over all Lots for the encroachment of improvements now or hereafter constructed by the Declarant on adjacent Lots, Common Area or rights-of-way to the extent that such improvements actually encroach, including, but not limited to, such items as sidewalks, provided such encroachment does not interfere with the reasonable use of the Lots so encroached upon.

Section 10.08. Ocean Access. Ocean access for purposes of ingress and egress and access to the Atlantic Ocean shall be via those designated public accesses, subject to the rights of the public.

7/14/04



Article XI  
Party Walls, Party Fences, Joint Driveways And  
Shared Improvements

Section 11.01. General Rules of Law to Apply. Each improvement which is constructed within Dwelling Units as a part of the original construction and any part of which is placed on the dividing line between separate Dwelling Units shall constitute a "Shared Improvement." With respect to such Shared Improvement, each of the adjoining Owners shall assume the burdens of and be subject to an easement for that portion of the Shared Improvement on such Owner's Dwelling Unit, and shall be entitled to the benefits of this Article XI. To the extent not inconsistent herewith, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions, shall apply to Shared Improvements and their adjoining Owners.

Section 11.02. Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty. All Owners who make use of or benefit by any Shared Improvement on a regular basis shall share the cost of the reasonable repair and maintenance of such Shared Improvement, in equal proportions, unless otherwise agreed by such Owners. If a Shared Improvement is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners (including ordinary wear and tear and deterioration from lapse of time), then, in such event, all such adjoining Owners benefiting from the Shared Improvement shall proceed forthwith to rebuild or repair such Shared Improvement to its original condition or the condition which existed immediately prior to the damage, unless otherwise agreed by such Owners. The costs associated with rebuilding or repairing a Shared Improvement pursuant to Section 11.01 shall be shared equally among all adjoining Owners benefiting from the Shared Improvement, unless otherwise agreed by such Owners.

Section 11.03. Repairs of Damage Caused by One Owner and/or Resident. If any such Shared Improvement is damaged or destroyed through the act of one adjoining Owner and/or resident, so as to deprive the other adjoining Owner and/or resident of the full use and enjoyment of such Shared Improvement, then the Owner and/or resident responsible for such damage shall proceed forthwith to rebuild or repair such Shared Improvement to its original condition or the condition which existed immediately prior to the damage, without cost to the adjoining Owner and/or resident.

Section 11.04. Changes to Shared Improvements. In addition to meeting the other requirements of this Declaration, and of any building code, zoning ordinance or similar governmental regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a Dwelling Unit in any manner which requires the extension or other alteration of any Shared Improvement, shall first obtain the written consent of the adjoining Owner. Such consent shall not be unreasonably withheld, delayed or denied.

7/14/04

Section 11.05. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 11.06. Driveway Right of Passage. With respect to any private driveway within and shared by the Owners of two or more Dwelling Units, there shall be a perpetual and non-exclusive easement and right of passage on, through, over, under and across such driveway reserved to and for the benefit of the Owners of the Dwelling Units upon which the joint driveway has been built or installed. This easement shall also be reserved to and for the benefit of any Dwelling Units which such joint driveway has reasonably been designed to serve or benefit, for purposes of vehicular and pedestrian ingress and egress to and from such Dwelling Units. No person shall in any way interfere with the free and unobstructed use thereof by said owners.

Section 11.07. Dispute. In the event of a dispute between Owners with respect to the repair or rebuilding of a Shared Improvement or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the Association shall address the matter and in the event the matter is not resolved by the Association, then the matter may be submitted to the Association who will conduct a hearing pursuant to the notice provisions of Section 7.14(b) which decision shall be final.

## ARTICLE XII INSURANCE: REPAIR AND RESTORATION

Section 12.01. Right to Purchase Insurance. The Association shall purchase, carry and maintain in force insurance covering any part or all of the Common Area, Landscaped Rights-of-Way and any improvements thereon or appurtenant thereto and any other property of the Association, for the interest of the Association, the Board, its agents and employees. Declarant and its officers and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as the Board shall consider to be good, sound insurance coverage for similar properties. Such insurance may include, but need not be limited to:

(a) comprehensive public liability and property damage (hazard) insurance on a broad form basis with respect to the Common Area and/or Landscaped Rights-of-Way with coverage of at least One Million and No/1 00 Dollars (\$1,000,000.00) for public liability and in an amount of at least eighty percent (80%) of replacement cost coverage for hazard insurance;

(b) coverage for the personal liability (if any) of the Declarant (and its officers, agents, employees and servants), the Board (and the individual members thereof), the officers of the Association, the ASC and other committees appointed by the Board, the Owners and Members;

7/14/04

(c) Fidelity bond for all officers and employees of the Association and other Persons having control over the receipt of disbursement of Association funds; and

(d) Worker's compensation insurance to the extent necessary to comply with all applicable laws.

Section 12.02. Insurance Proceeds. Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of casualty insurance recovered to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area and/or Landscaped Rights-of-Way.

Section 12.03. Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment in the manner provided for in this Declaration, to cover the deficiency.

### ARTICLE XIII Miscellaneous Provisions

Section 13.01. Duration. This Declaration and the terms, covenants, provisions set forth herein shall run with and bind the Property and shall inure to the benefit of every Owner of a Lot in the Property, including Declarant, and their respective heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded and including December 31, 2033. Beginning on and including January 1, 2034, the easements, covenants, conditions and restrictions herein shall be automatically extended for successive period(s) of ten (10) years each unless, at duly called annual or special meeting of the Association at which a quorum is present held prior to the expiration of the applicable time period, termination of this Declaration is approved by the affirmative vote of seventy-five percent (75%) or more of the votes entitled to be cast by the Members present or represented by proxy. A vote by the membership on termination of this Declaration may be held only upon presentation to the Association of a petition for termination signed by Members possessing no less than twenty-five percent (25%) of the total eligible vote of the membership of the Association, which petition, in the case of an annual meeting of the Association, shall be presented to the Association prior to the date that notice of the annual meeting is sent to the Members. The Association shall give written notice of any annual or special meeting, at which termination of this Declaration is to be considered and voted upon to all Owners at least thirty (30) days in advance of the date of such meeting, which notice shall set forth that termination of this Declaration will be considered and voted upon at such meeting. If the membership votes to terminate this Declaration, such termination shall be effective upon the expiration of the then applicable time period for which the Declaration is in existence, or shall be

7/14/04

effective on such date thereafter as may be specified in the resolution of termination passed by the membership as required herein (it being the intention of this Section, notwithstanding anything to the contrary appearing herein, that if the membership has voted to terminate this Declaration, the membership may set a date of termination that may result in this Declaration continuing to be in effect for a period of less than ten (10) years following the expiration of a preceding time period in which this Declaration was in effect). The quorum required at the annual or special meeting at which termination of this Declaration is to be considered by the membership pursuant to the petition filed with the Association shall be the presence of Members plus proxies entitled to cast sixty percent (60%) or more of the total vote of the membership. If such quorum is not present, subsequent meeting(s) may be called until a quorum is present, subject to the same notice requirements, and the required quorum at such subsequent meeting(s) shall be one-half (1/2) of the required quorum at the immediately preceding meeting.

If the Members vote to terminate this Declaration in accordance with the foregoing requirements, then the President and Secretary of the Association shall execute in recordable form a certificate which shall set forth at least the following information: the Resolution of Termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting, was given, the total number of votes required to constitute a quorum at such meeting; the total number of votes present at such, meeting; the total number of votes necessary to adopt the resolution terminating the Declaration; the total number of votes cast in favor of such resolution; and the total number of votes cast against the resolution. Such certificate shall be recorded in the Dare County, North Carolina Registry no later than thirty (30) days following the date such resolution of termination is passed by the membership, and such certificate may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 13.02. Amendment. Subject to the limitations hereinafter contained, this Declaration or any Supplemental Declaration hereto may be amended or modified at any time prior to December 31, 2033 by an instrument signed by the Owners entitled to exercise not less than seventy five (75%) of the total votes in the Association as set forth in this Declaration, provided, however, that no such amendment shall be effective without the written consent of Declarant so long as there is Class B Membership, and in no event shall any amendment limit the rights of Declarant under this Declaration so long as there is a Class B Membership. With respect to any amendments affecting specific Limited Common Property, the foregoing percentages are required only of those Owners of Lots or Dwelling Units that are located in the chase or section of the Development to which such Limited Common Area relates.

In addition to the foregoing rights, and notwithstanding anything to the contrary that may appear herein, Declarant may (at Declarant's option) at any time and from time to time amend or modify this Declaration and any Supplemental Declaration without obtaining the consent or

7/14/04

approval of the Members or any other person or entity if such amendment or modification is necessary for any one or more of the following purposes: to correct an obvious typographical error; to cause this Declaration or any such Supplemental Declaration to comply with the requirements of FHA (Federal Housing Administration), VA (Veterans Administration), Fannie - Mae (Federal National Mortgage Administration), Office Of Interstate Land Sales Registration of the Department Of Housing And Urban Development (OILSR) or other similar agency; or as may be necessary to establish or maintain the tax exempt status of the Association under the laws of the United States or the State of North Carolina.

All amendments to this Declaration must be recorded in the Dare County, North Carolina Registry and shall not become effective until recorded. With respect to amendments that require approval of the Owners, all such amendments also shall be executed by the Association, following determination by the Board that the amendment has been duly approved by the required percentage of Owners (for the purpose of this determination, the Board may rely on its most current membership list and shall not be required to conduct any title examination of any Lot to determine ownership thereof). The Board shall make its determination (and cause the amendment s) to be recorded if the Board determines that the required number of Owners have executed the amendment(s) within thirty (30) days of receipt of the proposed amendment(s) purportedly signed by the required number of Owners. If the Board determines that the required number of Owners have executed the proposed amendment(s), the Board shall cause the amendment(s) to be recorded.

With respect to amendments by the Declarant which do not require the assent of the Owners, the Association also shall execute such amendments prior to the recordation thereof so that such amendments may be indexed in the Dare County Registry in the name of the Association as well as in the name of the Declarant.

Section 13.03. Remedies. Declarant, the Association, and every Owner shall have the right to enforce the terms, covenants, conditions, restrictions, easements, charges and liens for which provision is made in this Declaration, which enforcement shall be by any proceeding at law or in equity (or otherwise, as provided in this Declaration) against any Person violating or attempting to violate any such term, covenant, condition, restriction, easement, charge or lien either to restrain violation or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association, Declarant or any Owner to enforce any such term, covenant, condition, restriction, easement, charges or lien shall in no event be deemed a waiver of the right to do so thereafter or a waiver of any other or future violation of any of same.

Section 13.04. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections,

7/14/04

sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 13.05. Notice. Except as otherwise provided herein, whenever written notice to an Owner (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner appearing on the records of the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. It shall be the duty of each Owner to keep the Association informed of such Owner's current mailing address and telephone number. The Association may use the address of such Owner's Lot listed with the Dare County Tax Office.

Section 13.06. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or Board, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive.

Section 13.07. No Trespass. Whenever the Association, Declarant, the ASC, and their respective successors, assigns, agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve or do any other action within any portion of Hatteras Island Estates, the entering thereon and the taking of such action shall not be deemed to be trespass.

Section 13.08. Successors of the Declarant. Any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by the Declarant by instrument in writing and recorded in the Dare County Registry.

Section 13.09. No Partition. Except as is permitted in the Declaration or amendments thereto, there shall be no judicial partition of the Common Areas or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any judicial partition unless the Property or such portion thereof have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Association from acquiring and disposing of tangible personal property nor from acquiring title to real property which may nor may not be subject to this Declaration.

Section 13.10. Combination of Lots. For so long as there is a Class B Membership, no Lot shall be subdivided without the written consent of Declarant. One or more Lots may be combined into a single Lot with the written consent of Declarant and, upon such combination and consent of Declarant, the resulting Lot shall be considered as one Lot for the purposes of this Declaration.

7/14/04

Provided, the foregoing shall not prohibit or restrict the right (which is hereby reserved) of Declarant to subdivide, combine, re-subdivide, recombine, or re-record maps relating to, any Lots subject to this Declaration.

Section 13.11. Laws of North Carolina and the United States. This Declaration shall be subject to and construed in accordance with the laws of the State of North Carolina and all applicable laws and regulations of the United States of America.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has caused this Declaration to be signed in its company name the day and year below acknowledged.

**DECLARANT:**

Hatteras Island Resort, LLC

By: \_\_\_\_\_ (SEAL)  
Michael V. Pugh, Manager

DARE COUNTY  
NORTH CAROLINA

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that Michael V. Pugh, personally appeared before me this day and acknowledged that he is Manager of Hatteras Island Resort, LLC a North Carolina limited liability company, and that by authority duly given and as the act of the Company, the foregoing instrument was signed in its name by him as its Manager

Witness my hand and official stamp or seal this the \_\_\_\_ day of July, 2004.

\_\_\_\_\_ (SEAL)

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

7/14/04