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Page: 1 of 73
05/21/2004 01:52P

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NORTH CAROLINA
DARE COUNTY

DECLARATION OF
THE VILLAS OF HATTERAS LANDING
CONDOMINIUM

DECLARANT: Harborside Investment Associates, LLC, a North Carolina limited liability company
(hereinafter "Declarant")

CONSENTERS: See Exhibits "E-1" and "E-2" attached hereto and incorporated herein by reference.

DATE: May 21, 2004

RECITALS:

1. Harborside Investment Associates, LLC is the owner in fee simple of a certain tract of land and all improvements thereon. Said lands are situated in the Village of Hatteras, Dare County, North Carolina, and adjoin the development commonly referred to as Hatteras Landing. On this property, Declarant has previously constructed various improvements and, for years, has managed the improvements as a hotel;

2. Harborside Investment Associates, LLC shall convert two of the three former hotel buildings and the surrounding lands into a Condominium pursuant to and in accordance with



Chapter 47C of the North Carolina General Statutes. Harborside Investment Associates, LLC's construction project or development is known as "THE VILLAS OF HATTERAS LANDING". Said development may consist of residential units, walkways, and/or recreational areas as planned and permitted to be constructed by Harborside Investment Associates, LLC. The commercial hotel building has not been submitted to the Act and will remain in operation as a hotel until such time, if at all, Declarant submits it to the Act in accordance with the Act or the Declarant Rights further described herein.

3. At the time of filing this Declaration, the residential units (and the commercial hotel rooms), recreational areas and walkways are encumbered by a Development Agreement recorded in Book 1024, Page 142, Dare County Registry.

4. The lands are further described in Exhibit "A" attached hereto and incorporated herein by reference. By this Declaration, Declarant submits the land and all improvements (except the building on the Plat still shown as hotel-use or "Possible Future Phase – Need Not be Added"), easements, appurtenances, riparian and other incidental rights attaching thereto (all known as "Submitted Property") and further described in Exhibit "A" to the provisions of Chapter 47C of the General Statutes of North Carolina and amendments thereto. A copy of said Chapter 47C can be obtained as further described on Exhibit "C" and attached hereto.

5. The Consenters have heretofore purchased or otherwise acquired land or interests in lands lying within the original outer boundaries of the Submitted Property or have a lien or other interest that requires consent to this Declaration.

6. Chapter 47C is generally known as the North Carolina Condominium Act and by this Declaration the Declarant creates a Condominium ("Condominium") with respect to the Submitted Property. A maximum of fifty-three (53) Condominium Units may be built on the land that is hereinafter referred to as the Submitted Property (as hereinafter defined), which is submitted to the North Carolina Condominium Act by this Declaration, or if already built may be converted to Condominium Units. Said Units may be built and certified as complete in one phase of development or two phases.

7. The Villas of Hatteras Landing, A Condominium, shall consist of the Submitted Property as defined below, and shall be governed by the Villas of Hatteras Landing Owners Association, Inc., or VHLOA, which shall be created as the Unit Owners' Association for this Condominium pursuant to the requirements of the Act. Each Unit Owner shall be a member of the VHLOA that shall have the duty to ensure and maintain the overall integrity of the Condominium, and to own, improve, maintain, repair and replace the walkways, pool, amenities and facilities constituting the Common Elements of the Condominium.

NOW, THEREFORE, Declarant hereby makes this Declaration for the purposes and subject to all the terms and provisions hereinafter set forth and Consenters consent to this Declaration.



ARTICLE ONE DEFINITIONS

1.1 **Definitions.** Any terms defined in Section 47C-1-103 of the Condominium Act and found in the Condominium Documents shall have the meanings specified in the Act unless the context requires otherwise and except to the extent, if any, that such definitions are changed below. In addition, the other terms defined below shall be deemed to have the meanings specified herein whenever they appear in the Condominium Documents unless the context requires otherwise. These terms shall maintain the meanings specified in the Act or herein although they may appear in lowercase or uppercase print either in whole or part.

- a. "Act" means the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes, as amended.
- b. "Assessment" means the share of the Common Expenses assessed periodically against a Condominium Unit and its Owner by the Association in the manner provided herein.
- c. "Association" means the Villas of Hatteras Landing Owners' Association, Inc., a North Carolina non-profit corporation, formed for the purpose of exercising the powers of the Association under the Act and the Condominium Documents (sometimes hereinafter referred to as the "VHLOA").
- d. "Board of Directors" or "Board" means the board of directors of the Association that is the governing body of the Association.
- e. "Bylaws" means the bylaws of the Association, as amended from time to time, a copy of the initial Bylaws being attached hereto as Exhibit "B" and having attached thereto the Articles of Incorporation as Exhibit "B1".
- f. "Common Elements" mean all portions of the Condominium other than the Units.
- g. "Common Expenses" means all sums lawfully assessed against the Unit or Unit Owners by the Association for the following: expenses of administration, maintenance, repair or replacement of the Common Elements (including Limited Common Elements); expenses agreed upon as Common Expenses by the Association; expenses declared Common Expenses by the provisions of the Act, this Declaration or the Bylaws; and, insurance premiums.
- h. "Condominium" means the Submitted Property submitted to the provisions of the Act by the Condominium Documents.
- i. "Condominium Documents" mean this Declaration, the Bylaws, the Act, the Plat and the Plans, including any and all exhibits, schedules, notes appended thereto, certifications and amendments thereof, as may exist from time to time, and recorded pursuant to the Act.



- j. "Condominium Unit" means a Unit together with the undivided interest in the Common Elements appertaining to that Unit.
- k. "Declarant" means Harborside Investment Associates, LLC, which is the fee simple owner of the Submitted Property and has executed this Declaration.
- l. "Declaration" means this Declaration as amended from time to time.
- m. "Director" means a member of the Board of Directors.
- n. "First Mortgagee" means the holder of a first-in-priority Mortgage.
- o. "Foreclosure" includes, without limitation, the judicial foreclosure of a mortgage or the exercise of a power of sale contained in any Mortgage or the foreclosure of an assessment lien against a Unit Owner.
- p. "Institutional Mortgagee" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including, but not limited to, real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.
- q. "Lease" means any lease, contract, tenancy, sublease, rental contract or other occupancy agreement whether oral or written.
- r. "Limited Common Elements" means a portion of the Common Elements reserved for the exclusive use of one or more, but less than all, of the Units.
- s. "Majority" means more than fifty percent (50%) in any context unless a different percentage is expressly required.
- t. "Mortgage" means a mortgage, deed to secure a debt, deed of trust, security agreement or other instrument conveying a lien upon or security interest to a Condominium Unit as security for indebtedness or for the performance of an obligation.
- u. "Mortgagee" means the holder, guarantor, insurer of a Mortgage or a beneficiary under a Deed of Trust.
- v. "Occupant" means any person, including, without limitation, any guest, invitee, tenant, lessee or family member of an Owner occupying or otherwise using or visiting at or in a Unit.



- w. "Officer" means an officer of the Association.
- x. "Owner" has the same meaning as Unit Owner or Unitowner.
- y. "Plans" mean the plans for the Condominium which were certified and filed for record contemporaneously with this Declaration, and recorded in Unit Ownership File ____, Slides ____ through ____, inclusive, Dare County Registry, as amended and certified from time to time.
- z. "Plat" means the plat of survey for the Condominium which is certified and recorded in Unit Ownership File ____, Slides ____, through ____, inclusive, Dare County Registry, as amended and certified from time to time.
- aa. "Record" or "file for record" means filing for record in the Office of the Register of Deeds of Dare County, North Carolina.
- bb. "Schedule of Unit Information" means the schedule attached hereto as Exhibit "D", which schedule shows for each Condominium Unit its Unit Designation or Identifying Number, dimensions, undivided interest in the Common Elements, number of Votes in the Association, and share of liability for Common Expenses.
- cc. "Size" means the square footage in feet of a Unit as determined by reference to the Plat and Plans and rounded to the nearest whole number.
- dd. "Submitted Property" means the property lawfully submitted to the provisions of the Act and the Condominium Documents from time to time by the recordation of Condominium Documents in accordance with the Act. The Submitted Property is the land described in Exhibit "A" and shown on the Plat together with all improvements thereon and all rights and easements appurtenant thereto.
- ee. "Unit means a portion of the Condominium intended for independent ownership and use, as more fully set forth and shown in the Condominium Documents and the Act.
- ff. "Unit Designation" means one or more numbers or letters or combination thereof that identify each Unit, as set forth in the Schedule of Unit Information, and as shown on the Plat and Plans.
- gg. "Unit owner" or "Unitowner" has the same meaning as Owner and means one or more persons, including the Declarant, who own a Condominium Unit. This term does not include a Mortgagee in its capacity as such, but shall include any person, firm, corporation or entity capable of holding title to real estate in North Carolina.
- hh. "Unsold" shall mean not yet having been conveyed.
- ii. "Vote" means the vote in the Association appertaining to each Condominium Unit.



jj. "Build" or "Built" shall also be deemed to mean "convert" or "converted."

ARTICLE TWO CREATION OF THE CONDOMINIUM

2.1 Submission to the Act. Declarant hereby submits the Submitted Property to the Act and Consenters consent to the same. The Submitted Property and every interest therein shall, after the recording of this Declaration, be owned, held, transferred, sold, conveyed, used, leased, occupied, mortgaged and deeded in trust subject to the Act and the Condominium Instruments. Every person acquiring or having any interest in the Submitted Property, by acceptance of a deed or other instrument of any kind, whether or not such deed or other instrument is signed by such person or otherwise agreed to in writing shall take such interest subject to the Act and to the Condominium Instruments and shall be deemed to have agreed to the same.

2.2 Name. The name of the Condominium is "The Villas of Hatteras Landing, A Condominium".

2.3. Governing Provisions. The Condominium, the Association and each Unit Owner shall be governed by the Act, the Condominium Documents and any rules and regulations adopted by the Association pursuant to the Condominium Documents.

ARTICLE THREE DESCRIPTION OF THE CONDOMINIUM

3.1 Submitted Property. The Submitted Property is described on Exhibit "A" and shown on the Plat, and includes all improvements thereon (except that the building shown on said plat that is labeled as "POSSIBLE FUTURE PHASE – NEED NOT BE ADDED" is not part of the submitted property and the same shall remain independent hotel rental rooms until such time as the building is added to the Condominium as provided on the Plats, by law or herein) and all rights and easements appurtenant thereto. The improvements include thirty-two (32) Units (that may be increased to a total of fifty-three (53) units), a pool, walkways, and other improvements shown on the Plat and Plans.

3.2 Condominium Units. The Condominium presently contains thirty-two (32) units and may contain up to fifty-three (53) Condominium Units in two separate phases of development. The Identifying Numbers for the first phase of development are set out on the Schedule of Unit Information and are shown on the Plat and Plans. Each Condominium Unit consists of the Unit together with its undivided interest in the Common Elements. The Schedule of Unit Information sets forth for each Condominium Unit its Identifying Number, square footage of heated area, and undivided interest in the Common Elements, Votes in the Association and share of liability for Common Expenses. The allocation of undivided interests in the Common Elements and of the Common Expenses is based on 100 divided by the number of units (i.e., $100 / 32 = 3.125\%$). The votes in the Association are equally allocated to all Units. Each Condominium Unit shall constitute for all purposes a separate parcel of real property that may be owned in fee simple and which, subject to the provisions of the Act and the Condominium Instruments, may be



conveyed and encumbered. The undivided interest in the Common Elements for each Condominium Unit shall not be altered except as expressly provided by the Act and this Declaration. Such undivided interest shall not be separated from the Unit to which it appertains and is deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Unit Owner shall automatically be a member of the Association which membership shall continue during the period of ownership of the Condominium Unit by such Unit Owner.

3.3 Unit Boundaries. Each Unit shall include all the space within the boundaries thereof as shown on the Plat and Plans. The perimetrical or vertical boundaries of each Unit are the vertical planes of the interior surfaces of the wood, concrete or metal framing of the walls of the Unit, whether such walls are exterior walls or walls separating the Unit from other Units or the Common Elements, and the vertical planes of the exterior surfaces of windows and entry doors, including sliding glass doors, if any. The perimetrical Unit boundaries include the sheetrock / drywall on the Unit side of the walls, with the framing being a part of the Common Elements, and they are extended to their intersection with each other and the upper and lower horizontal boundaries of the Unit. The lower horizontal boundary of each Unit is the plane of the upper surface of the sub-floor of that Unit, and the upper horizontal boundary of each Unit is the lower surface of the ceiling joists of the Unit, with such sub-floor and framing being a part of the Common Elements. The upper and lower boundaries of each Unit include the wood, dry-wall, plaster or other material forming the ceiling or floor, as may be applicable, on the Unit side of such sub-floor or framing as the case may be and extend to their intersection with the perimetrical boundaries of the Units. Window screens and all fixtures, equipment and appliances located within the boundaries of each Unit, including without limitation, portions of the heating and air-conditioning system and the hot water heater are deemed to be a part of each Unit. If any chutes, conduits, wires, pipes or any other apparatus lies partially within or partially outside of the designated boundaries of a Unit, any portions thereof which serve only that Unit shall be deemed a Limited Common Element of that Unit, while any portions thereof which serve more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements. Further, any fan coil unit mounted above the ceiling of a Unit and the air-conditioning/heating unit located outside the Unit but serving that Unit only shall be deemed to be a part of that Unit. In interpreting the Plans, the existing physical boundaries of a Unit as originally constructed or a Unit reconstructed in substantial accordance with the original Plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any Plat or Plans, regardless of settling or lateral movement of the building and regardless of minor variance between the boundaries shown on the Plans or in a deed and those variances between the boundaries shown on the Plans or in a deed and those of the Unit. If an Owner acquires an adjoining Unit, thereby becoming the common Owner of adjoining Units, such Owner shall have the right (subject to the prior written approval of the Mortgagees of the Units involved and any other approvals necessary as outlined in any Condominium Documents) to remove all or any part of any intervening walls notwithstanding the fact that such partition may, in whole or in part, be part of the Common Elements, so long as no portion of any other Common Elements, serving any other part of the Condominium, is damaged, destroyed, or endangered. The alterations permitted by the preceding sentence shall not be deemed an alteration or relocation of boundaries between adjoining Units, nor an alteration of the allocated interest in the Common Elements, Vote assigned to each Unit, share of liability for Common



Expense Assessments or other appurtenant rights or interests as such appears on the Schedule of Unit Information attached hereto as Exhibit "D".

3.4 Common Elements. The Common Elements consist of all portions of the Condominium other than Units. Certain portions of the Common Elements are Limited Common Elements, as set out in Section 3.5. The Association and the Unit Owners agree that said Common Elements shall not be subject to partition or division except as follows:

3.4.1 Notwithstanding any provisions herein to the contrary, it is expressly provided that the Association may convey to the Declarant any portion of the Common Elements theretofore conveyed to the Association in exchange for other portions of the properties conveyed by the Declarant to the Association provided that all conveyances are approved in accordance with Section 47C-3-112 of the Act, any other applicable statute and this Declaration. Upon such conveyance, the area thus conveyed to the Declarant shall cease to be a portion of the Common Elements and shall cease to be subject to the provisions of these covenants relating to the Common Elements, but the area thus conveyed to the Association shall become Common Elements and subject to the provisions of this Declaration relating to Common Elements.

3.5 Limited Common Elements. The Limited Common Elements are those portions of the Common Elements which are reserved for the exclusive use of those persons who are entitled to the use of one or more, but less than all, of the Units. Limited Common Elements are not separate and apart from the Common Elements in general, but are limited only with respect to the exclusive use thereof by the Units to which they are assigned. Limited Common Elements are assigned as follows and not otherwise:

3.5.1 The steps, walkways, utility posts, meter boxes, electrical boxes, cable television and telephone lines, power outlets and water faucets or spigots for hose connections, wires, pipes and conduits which serve a Unit and which are appurtenant to each Unit shall be Limited Common Elements assigned to the Units having direct access thereto or direct use thereof. If such are assigned to serve one or more, but less than all, of the Units, then it shall be a Limited Common Element appurtenant to the Units so served.

3.5.2 The Board of Directors of the Association shall have the ultimate power and responsibility for determining whether Limited Common Areas in need of repair are to be the obligation of the entire Association or the obligation of the Owners of the Units that those Limited Common Elements serve. The Board may, by majority vote, determine the amount and levy any special Assessments for repairs of Limited Common Elements consistent with its determination pursuant to this paragraph.

3.6 Development Rights. The Declarant has planned for a maximum of fifty-three (53) Condominium Units to be constructed or converted from hotel/motel use on the Submitted Property and submitted to the Act. Reference is hereby made to the Plat and Plans made a part hereof, which Plat and Plans will show the location, size, and dimensions of the entire Condominium once completed. The Declarant reserves the right to develop, construct or convert



6134863

Page: 9 of 73
05/21/2004 01:52P

the Units and improvements shown on the Plat and Plans and to have such Units deemed to be separate Units and not a part of the Common Elements. Such Units, including those areas labeled "POSSIBLE FUTURE PHASE. NEED NOT BE ADDED", will be built/converted, if at all, within three (3) years of the recordation of this Declaration of Condominium. The development rights herein reserved may be exercised with respect to different portions of the property submitted herein at different times. No assurances are made as to the boundaries of those portions or the order in which those portions may be subjected to the exercise of each development right. No assurances are given that if a development right is exercised with regard to one portion of the Submitted Property subject to development rights, that development rights will be exercised in all or in any other portion of the remainder of the Submitted Property.

If Declarant exercises its rights to submit the Possible Future Phase to the Act and, thus, a part of this Condominium, certain construction / modification work may be undertaken. Among other things, the current hotel rooms would be doubled in size by the removal of the middle partition wall that separates the pool-side rooms from the parking lot rooms. Such construction work may be undertaken by Declarant at anytime. THIS CONSTRUCTION WORK MAY BE DISRUPTIVE TO UNITOWNERS, THEIR GUESTS AND INVITEES.

With regard to those Units and improvements shown on the Plat and Plans and labeled "POSSIBLE FUTURE PHASE. NEED NOT BE ADDED" which have not been completed or converted as of the date of filing for record of this Declaration of Condominium, they **NEED NOT BE ADDED**, and the Declarant hereby reserves the right to refrain from the development and construction of such Units. In the event the Declarant chooses not to develop, construct or convert any or all of the second phase of twenty-one (21) Units, then the area where such Units or improvements were to be converted shall remain hotel rooms as previously described herein and Unitowners shall share usage of common elements with the owner of the hotel rooms and their occupants. Such election by the Declarant to not construct or convert the twenty-one (21) units of the second phase will not change each Unitowners' percentage share of Common Expenses and Assessments for the Units actually converted. To the extent that some or all of the twenty-one (21) units in the second phase are converted to condominium units, then each Unitowners' percentage share of Common Expenses and Assessments shall be amended by means of a proportionate reallocation of the percentage interest assigned to such Unit based on the overall number of units converted and declared and the ratio established in the Schedule of Unit Information shall be amended correspondingly for each Unit.

The Declarant hereby reserves for its benefit, its agents, lessees, employees, successors and assigns any and all easements and accesses necessary over and through the Submitted Property and any adjoining lands for the building, developing, completion and operation of The Villas of Hatteras Landing, A Condominium, according to its Master Plan, which may be amended at its sole option. The Declarant hereby reserves for its benefit the right to develop and improve land and properties in The Villas of Hatteras Landing, in its sole discretion, shall deem proper. Declarant reserves the right to add other property to the Condominium, but in no event shall the maximum number of units exceed fifty-three (53). The area that Declarant might add to the Condominium is designated on the Plat as "POSSIBLE FUTURE PHASE. NEED NOT BE ADDED".



The Declarant may continue to use the area designated for FUTURE PHASE. Such use may include, but may not be limited to, a hotel. Hotel guests shall be entitled to use all the common elements in conjunction with Unitowners and their guests. Declarant and its guests shall have such easements and rights to use the Submitted Property as is necessary to make use of the FUTURE PHASE for the purposes of commercial hotel operations. All Units are subject to these easements and rights. Similarly, Unitowners shall have such easements to use the Common Porches, stairs, walkways or other improvements lying within the Hotel Parcel, but not inside hotel units.

3.7 General Condominium and Association Information.

3.7.1 All Owners, as members of the Association, shall have the right to vote on Association matters in accordance with the votes allotted to Units owned by that member. The VHLOA shall have the right and duty to maintain and improve the decks, walkways, pool, vending & ice areas, office, storage and housekeeping spaces and other improvements constituting the Common Elements of the Condominium and to charge the Owners for their proportionate share of the costs of such maintenance and improvements. Among these costs shall be an amount due to the Association or Harborside Investment Associates, LLC, for usage fees of the wastewater capacity and treatment system and to maintain and repair the treatment system. Furthermore, the owner of the Commercial Area of Hatteras Landing may assess or otherwise bill the VHLOA and the Commercial Area tenants (or other owners of any unit within the boundaries of the Commercial Area of Hatteras Landing) the costs of maintaining and repairing the roads, parking areas, and entrance landscaping to The Villas of Hatteras Landing from the parking area at Hatteras Landing.

3.7.1 In the event the Declarant shall at any time provide any services for potable water, sewer, garbage and trash pickup, and street, sidewalk and street lighting maintenance to this Condominium, the Declarant is hereby given and granted the right, at its sole option, to assign and transfer its duties and obligations of providing such services to the VHLOA along with all right, title, or interest to any service facilities the Declarant may have.

The Condominium shall be supplied potable water by Dare County and Owners shall be billed direct by the County.

3.7.2 Trash and garbage collection and pickup are currently provided by Dare County. Owners must transport their trash and garbage to a dumpster or other approved container which will then be emptied by Dare County. In the event "door-to-door" pickup is provided to individual Owners, any such "door-to-door" pickup will be provided by the Association or Dare County and not by the Declarant, unless otherwise agreed.

3.7.3 The VHLOA accepts the responsibility to provide installation and maintenance of exterior lighting for the Condominium.

The Declarant or the VHLOA shall arrange for electrical services to the Condominium. Utility charges shall be apportioned to the Unitowners through regular dues and assessments. Portions of the Condominium other than Units may be supplied water and electrical services for the use and benefit of all Owners. The Association shall have the right and duty to



charge the Owners for such water and electrical services as a Common Expense of the Association.

3.8 Bylaws of the Villas of Hatteras Landing Owners Association, Inc. The Villas of Hatteras Landing Owners Association, Inc. shall be governed by this Declaration and the Bylaws of the Association attached hereto as Exhibit "B" and incorporated herein by reference. The said Bylaws contain provisions for hearings and the levying of fines against Owners and the suspension of rights and privileges granted to members of the Association. In the event of a conflict or inconsistency between the terms and provisions of the said Bylaws and this Declaration, the terms and provisions of this Declaration shall prevail.

ARTICLE FOUR EASEMENTS

In addition to the easements created by the Act, the easements described in this Article from each Owner to each other Owner, to the Association, and to the Declarant are hereby granted, reserved and established, subject to and in accordance with the following terms and conditions:

4.1 Use and Enjoyment Every Owner shall have a right and easement of use and enjoyment in and to the Common Elements (including the right to access, ingress and egress to and from his Unit over those portions of the Common Elements designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to every Condominium Unit, subject to the following provisions and limitations:

4.1.1 The right of the Association to control the use and enjoyment thereof as provided by the terms of this Declaration, which shall include, but not be limited to, the right of the Association to limit the use and enjoyment thereof to the Owners and their respective Occupants, as well as to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner and his Occupants.

4.1.2 The right of the Association to limit the number of guests of Owners who occupy or use the Unit at one time.

4.1.3 The right of Owners to the exclusive use of the Limited Common Elements appurtenant to their respective Units.

4.1.4 The right of the Association to suspend the (1) Vote and (2) right to use any facilities of the Condominium by the Owner and his Occupants and Common Areas appurtenant thereto for any period of time during which an Assessment against his Unit remains unpaid or, for a reasonable time, for infractions of any provisions of the Condominium Documents or rules and regulations duly promulgated by the Association.

4.2 Structural Support. Every portion of a Unit or the Common Elements that contributes to the structural support of another Unit or the Common Elements shall be burdened with an easement of structural support. No Owner shall be permitted to demolish his Unit except to the extent that such demolition may be required to repair or rebuild the Unit when the same has been partially or totally destroyed.



condemnation or eminent domain proceedings, and then be repaired or reconstructed, encroachments of portions of the Common Elements upon any Unit, or of any Unit upon any other Unit or upon any portion of the Common Elements, due to such repair or reconstruction, shall be permitted, and easements for such encroachments and the maintenance, repair and replacement thereof shall exist. This easement is intended to apply to only the extent necessary and is not intended to deprive another Owner or the Association of a substantial property right or use.

4.5 Maintenance and Repair. There shall be an easement in favor of the Declarant, the Association and the Owners through the Units and the Common Elements as may be reasonably necessary for the installation, maintenance, repair and replacement of Units and the Common Elements. Use of this easement shall be only upon prior notice during normal business hours, except that access may be had at any time in case of emergency.

4.6 Rights of Association. There shall be a general easement to the Association, its Directors, Officers, contractors, agents and employees (including, but not limited to any manager employed by the Association) to enter upon the Submitted Property or any portion thereof and to enter or gain access through the Units and the Common Elements as may be reasonably necessary for the installation, maintenance, repair and replacement thereof, for making emergency repairs and for other work for the proper maintenance and operation of the Condominium and for the performance of their respective duties. Each Owner shall afford to other Owners and to the Association, their respective contractors, agents, representatives and employees, such access through such Owner's Unit as may be reasonably necessary to enable them to perform such work and to exercise and discharge their respective powers and responsibilities. Except in the event of emergencies, however, such easements are to be exercised only during normal business hours and upon advance notice to and with the permission of the Owner or Occupant of a Unit directly affected thereby. The Association shall have the power to grant and accept permits, licenses and easements on, over, across and through the Common Elements for the installation, maintenance, repair and replacement of utilities, walkways and for other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium.

4.7 Rights of Declarant. So long as Declarant owns any Unit primarily for the purpose of sale or a hotel unit that is not yet converted to a condominium unit as contemplated herein, Declarant and its duly authorized contractors, representatives, agents, and employees shall have a transferable easement for the maintenance of signs and promotional facilities on the Submitted Property, together with such other facilities as in the opinion of the Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development or sale of the Units on the Submitted Property. The Declarant may use any unsold Unit as a model. The size and location of the Units are shown on the Plat and Plans. During the period that Declarant owns any Condominium Unit, Declarant, its duly authorized contractors, representatives, agents and employees, shall have a transferable easement, on, over, through, under and across the Common Elements for the purpose of making improvements on the Submitted Property and for the purpose of doing all things reasonably necessary and proper in connection therewith.

4.8 Easements. There is hereby created a blanket easement upon, across, over and under all of the Submitted Property subject to this Declaration for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas,



6134863

Page: 14 of 73
05/21/2004 01:52P

drainage, telephones, cablevision and electricity. This blanket easement is expressly in favor of, but not limited to, the Declarant and the Villas of Hatteras Landing Owners Association, Inc., its directors, officers, or agents. By virtue of this easement, it shall be expressly permissible for the electrical and/or telephone company providing service to erect and maintain underground and other equipment on said property, and to affix and maintain electrical and/or telephone wires, circuits, and conduits on, above, across and under the common elements. An easement is further granted to all law enforcement, fire protection personnel, garbage collectors, ambulance, rescue personnel and like persons to enter upon the walkways, common porches and Common Elements in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Elements provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially approved by the Declarant or thereafter approved by the Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document(s), Declarant or the Association shall have the right and authority to grant such easement. The easement provided for in this Section shall in no way abrogate other recorded easements on said premises.

Easements are hereby reserved over and through the Submitted Property for the use, benefit and enjoyment of the Declarant, its agents, employees, successors and assigns for the installation and maintenance of walkways, roads, streets and parking areas, if any, and for cable television services, sewage utility services, and such other reasonable services that the Declarant may, in its sole discretion, provide to the Condominium. Easements are hereby granted over and through the Submitted Property for the use, benefit and enjoyment of the Villas of Hatteras Landing Owners Association, Inc., its agents, employees, successors and assigns for the installation and maintenance of any walkways, roads, streets, parking areas, if any, and such other properties or improvements in and adjacent to the Submitted Property owned by or entrusted to the Villas of Hatteras Landing Owners Association, Inc. Said easement in favor of the Villas of Hatteras Landing Owners Association, Inc. shall include the rights of access, ingress and egress to fulfill its obligations under the Bylaws of said Association and all applicable Declarations and to enforce said Bylaws and Declarations against all Unit Owners in the Condominium. Easements of access, ingress and egress are hereby granted to Dare County over and through the Submitted Property as are reasonably necessary for the fulfilling of its obligations and purposes as a governmental body and for the providing of its services and utilities to the Condominium. Easements of access, ingress and egress are hereby granted to the hotel users over and through the Submitted Property as are reasonably necessary for the use of the Submitted Property as a location for temporary housing, vacation and leisure and recreation. Any easements and accesses herein granted or reserved by this and the preceding paragraph shall not obligate the person, corporation, municipality or other entity in whose favor the easement has been granted or reserved to provide the services or improvements for which the easements have been created, unless, in each instance, they are otherwise obligated to provide such service or improvement.

4.8.1 The following additional easements have been granted:



- a. North Carolina Department of Transportation for the right of way of NC 12 and is shown in Plat Cabinet D, Slide 117, Dare County Registry;
- b. Utility easements for existing utilities (the same are not recorded easements) and as may arise by implication;
- c. Cape Hatteras Electric Membership Corporation recorded in Book 983, Page 132, Dare County Registry; and
- d. Rights of others by virtue of the Development Agreement recorded in Book 1024, Page 142, Dare County Registry (including, but not limited to (1) the rights of others to use the swimming pool, (2) easement for vehicular and pedestrian access over and across roadways within the Submitted Property, and (3) easement for installation and use of Utility Easement as shown on a plat attached to the Development Agreement).
- e. Easements in favor of Hatteras Landing Homeowners Association, Inc. and The Paley-Midgett Company, LLC for the maintenance, repair and replacement of the wood walks and decks leading to and from the Condominium as further described in Development Agreement mentioned above.
- f. Easements in favor of The Paley-Midgett Company, LLC, recorded in Book 1565, Page 497, Dare County Registry, relative to vehicular and pedestrian access over and across certain areas of the Condominium. The easement includes an acknowledgment of Declarant that it and its successors and assigns shall not park or impede the parking spaces on the lands of The Paley-Midgett Company, LLC.

4.8.2 Each owner accepts the access "as is" and for itself, its agents, assigns, successors and guests, does forever hold harmless and indemnify the Declarant and Association from any and all loss or damage which Owner, its agents, assigns, successors and guests may suffer as a result of personal injury, monetary liability, claims, demands, costs or judgments against it arising out of, in whole or part, any alleged inadequacy of vehicular and pedestrian access in and around the Condominium of Hatteras Landing development.

ARTICLE FIVE MAINTENANCE AND REPAIR

5.1 Association. The Association shall maintain, repair and replace all portions of the Common Elements, except as may be herein otherwise specifically provided. This responsibility shall also include all Limited Common Elements appurtenant to the Units. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the



Association to take some action or perform some function required to be taken or performed by the Association under the Act or this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, order or directive of any municipal or other governmental authority.

5.2 Owner. Each Owner shall maintain, repair and replace all portions of his Unit, except those portions, if any, which are to be maintained, repaired or replaced by the Association. The Owner shall maintain, repair and replace all fixtures, equipment and appliances installed in his Unit or located within the boundaries thereof, and all conduits, wires, pipes or other apparatus located within the boundaries of such Owner's Unit or deemed to be a part thereof as provided herein. Each Owner shall perform his responsibilities in such a manner so as not to unreasonably disturb other persons in other Units. Each Owner shall promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible. The Association shall have the right, but not the obligation, to make any repair or replacement or to do any cleaning or maintenance which is the responsibility of the Owner if the Owner fails or refuses to do so, and in such event the Owner shall be obligated to pay for the cost incurred by the Association for such work. The Board of Directors shall have the sole right by majority vote to determine when any such repairs or replacements are made. The sums spent by the Association pursuant to this authority shall be conclusive upon the Owner(s) to be assessed. Each Owner shall also be obligated to pay for the cost of repairing, replacing, or cleaning any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of such Owner or any of his Occupants. The cost of any such repair, replacement, maintenance or cleaning shall be added to and become part of the Assessment or portion thereof next coming due to which the Owner is subject and shall constitute a lien against the Unit in like manner as other Assessments.

Each Owner shall:

- (i) Keep the Unit and its appurtenant Limited Common Elements in a clean, orderly and safe condition and appearance at the Owner's expense; and
- (ii) Not paint or otherwise alter the appearance of a Unit's Limited Common Elements without the Association's prior written consent.

ARTICLE SIX ASSESSMENTS

6.1 Lien. Each Owner covenants and agrees to pay to the Association all Assessments (general and special Limited Common Element Assessments, or any other Assessments properly levied by the Association) provided by the Act and by this Declaration which shall be fixed, established and collected from time to time as hereinafter provided. The formula for allocating percentage liability for Common Expenses and Assessments assigned to each Unit, as such are set forth in the Schedule of Unit Information and in Section 3.2 herein. All Assessments and other charges provided by this Declaration, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge against and continuing on his Unit while he is the Owner.



Any Unit shall be conveyed subject to a lien for any unpaid Assessments subject to the provisions of Section 47C-3-116 of the Act and Section 6.7 (Deed in Lieu of Foreclosure) hereof. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Elements or abandonment of his Unit. Notwithstanding any other provision contained in this Declaration, the Declarant may choose to be responsible for all Common Expenses until the end of the period of Declarant control or until the Villas of Hatteras Landing Owners Association, Inc. makes a Common Expense Assessment, at which time the Declarant will be bound to contribute to Common Expenses according to the allocations assigned to the Declarant for Units which remain unsold.

6.2 General Annual Assessments. The amount of all Common Expenses not specially assessed against one or more, but less than all, of the Condominium Units pursuant to the provisions of this Declaration, less the amount of all undistributed and unreserved excess of assessments and other income over expenditures, shall be assessed against the Condominium Units in accordance with the Schedule of Unit Information. The general annual Assessment shall be established by the Board of Directors in the manner set forth in this Section. During that portion of the Association's initial fiscal year, the annual Assessment applicable to each Condominium Unit shall be as set forth in the estimated budget for the Condominium delivered to each purchaser of a Condominium Unit. At least thirty (30) days prior to the annual meeting of the Association, the Board of Directors shall prepare and submit in writing to the Owners an estimated budget of the Common Expenses for the next succeeding fiscal year to be paid by Assessments collected from the Owners, together with the amount of the annual Assessment payable by each Owner during such fiscal year. If the estimated budget proves inadequate for any reason at any time during the year, then the Board of Directors may levy at any time a further Assessment against the Owners and notify the Owners accordingly. If for any reason an annual budget is not made by the Board, a payment in the amount required by the last prior Assessment shall be due upon each Assessment due date until changed by a new Assessment. Common Expenses of the Association to be paid through annual Assessments shall include, but shall not necessarily be limited to, the following Sections 6.2.1 through 6.2.9, inclusive, and the due date(s) of any such special Assessments shall be specified by the Board of Directors.

6.2.1 Management fees and expenses of administration, including management, legal and accounting fees.

6.2.2 Utility charges for utilities serving the Common Elements and charges for other common services including electricity, water, cable television, and telephone service.

6.2.3 The cost of any master or blanket policies of insurance purchased for the benefit of all Owners and the Association, if any, including fire and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interest of the Association and the Owners.

6.2.4 The expense of maintenance, operation and repair of the Common Elements as well as any maintenance upon the Units which is the responsibility of the Association under the provisions of Article Five, if such expense is not covered by a special



such Common Expenses. Notwithstanding anything to the contrary set forth herein, except as provided in Section 5 (Owner Maintenance and Repair), there shall be no special Assessments against any particular Condominium Unit for any Common Expenses associated with the maintenance, repair, restoration, renovation or replacement of any Limited Common Elements; rather, such expenses shall be Common Expenses. The special allocation of assessments provided for in this paragraph shall be levied by the Board of Directors in its reasonable judgment, and the amount and due date(s) of such Assessments so specially allocated by the Board shall be as specified by the Board. A person serving as a director or officer of the Association shall be immune individually from civil liability for monetary damages as provided for in N.C.G.S. 55A-8-60, as amended from time to time.

6.4 Special Assessments for Capital Improvements. In addition to the special and general Assessment authorized above, and in addition to the special Assessments for reconstruction or repair of casualty damage, the Board of Directors may levy special Assessments for the purpose of defraying, in whole or in part the cost of any capital addition to or capital improvement of the Common Elements (including the necessary fixtures and personal property related thereto), or for the cost of repair or replacement of a portion of the Common Elements (including the necessary fixtures and personal property related thereto), which is for the benefit of all Owners; provided, however, the total amount of the special Assessment levied by the Board of Directors under and pursuant to the provisions of this Section shall not exceed the sum of \$2,400.00 per Condominium Unit in any one calendar year unless approved by a Majority of the Owners at a meeting duly called and held for such purpose. Owners shall be assessed for special Assessments under this Section in accordance with the liability for Assessments of their respective Condominium Units, and the Board of Directors shall specify the due date(s) of any such special Assessments.

6.5 Non-Payment of Assessments: Remedies of Association. Any Assessment or portion thereof, not paid when due shall be delinquent, and the Board of Directors shall have the duty to enforce the collection of all delinquent Assessments. Any Assessment, or portion thereof, not paid within thirty (30) days after the due date shall constitute a lien on such Owner's Condominium Unit when filed of record in the Office of the Clerk of Superior Court, Dare County, in the manner provided for filing statutory liens against real property. If the same is not paid within thirty (30) days after the due date, then a late charge, not in excess of the greater of Fifteen Dollars (\$15.00) or eighteen percent (18%) of the amount of each Assessment or installment thereof not paid when due, shall also be due and payable to the Association. If any Assessment or portion thereof is delinquent for a period of more than thirty (30) days, and then is not paid within ten (10) days after written notice is given to the Owner to make such payment, the entire unpaid balance of the Assessment for the year in question may be accelerated at the option of the Board of Directors and be declared due and payable in full, and proceedings may be instituted to enforce such obligation and/or lien. Such notice shall be sent by U.S. Mail, postage prepaid, to the Owner at the address the Owner may have designated to the Association in writing, specifying the amount of the Assessments then due and payable, together with authorized late charges and interest accrued thereon. Any Assessment or portion thereof, together with authorized late charges, not paid when due shall bear interest from the date of delinquency until paid at eighteen percent (18%) per annum. The Board of Directors may suspend the Vote of the Owner or the rights of the Owner and his Occupants, invitees and guests, to use the recreational facilities of the Condominium during the period in which any Assessment or portion thereof remains unpaid and after at least ten (10) days



written notice is given to the Owner as aforesaid and the Association may bring an action at law against the Owner obligated to pay the same or foreclose its lien against such Owner's Condominium Unit, in which event late charges, interest and costs of collection shall be added to and included in such lien, with such costs of collection to include court costs, the expenses of sale, any expenses required for the protection and preservation of the Condominium Unit, and reasonable attorneys' fees. For the purposes of this Article, the amount of delinquent Assessments, late charges, accrued interest and the amount of accelerated Assessments, if any, shall be considered an indebtedness and shall be evidenced by this Section 6.5 and therefor evidence of indebtedness shall exist hereby. All payments on account shall be applied first to the aforesaid costs of collection, then to late charges, then to interest, and then to the Assessment lien first due. Each Owner vests in the Board of Directors the right and power to bring all actions against him personally for the collection of such Assessments as a debt and to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all Owners. The Association, acting through the Board, shall have the power to bid in the Condominium Unit at any Foreclosure sale and to acquire, hold, lease, encumber and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Condominium Unit. The rights and remedies conferred herein shall be in addition to, and not in lieu of, those set forth in Section 47C-3-116 of the Act.

In order to perfect the lien given by the foregoing provision, the Association shall file in the Clerk's office of the Dare County Superior Court, North Carolina, a claim of lien, which contains a description of the Condominium Unit in accordance with the provisions of Section 47C-2-104 of the North Carolina Condominium Act, the names of the record Owners of that Condominium Unit, the amount of unpaid assessments due or past due, together with the date when each fell due pursuant to the provisions of N.C.G.S. Section 47C-3-116 and Article 8 of Chapter 44 of the General Statutes of North Carolina. When payment or satisfaction is made of a debt secured by the foregoing lien, said lien shall be released by the duly authorized agent of the lien creditor.

6.6 Priority of Lien. The lien for Assessments, once perfected, shall be prior to all other liens and encumbrances except (a) the lien for real estate taxes on that Condominium Unit, and (b) the lien of a Mortgage securing sums unpaid to a Mortgagee or other lien or encumbrance recorded prior to the perfection of said lien for Assessments. Except as provided in Section 6.7 (Deed in Lieu of Foreclosure) hereof and Section 47C-3-116 of the Act, the sale or transfer of any Condominium Unit shall not affect the Assessment lien.

6.7 Deed in Lieu of Foreclosure. Notwithstanding anything contained in this Declaration or the Act which may be construed to the contrary, in the event any First Mortgagee that is an Institutional Mortgagee shall acquire title to any Condominium Unit by virtue of any deed in lieu of Foreclosure of a First Mortgage, such a First Mortgagee shall not be liable for, nor shall such Condominium Unit be subject to a lien for, any Assessment chargeable to such Condominium Unit on account of any period prior to the time such First Mortgagee shall so acquire title to such Condominium Unit; provided, however, that Common Expenses collectible thereafter from all Owners, including such First Mortgagee shall be paid as set forth in this Declaration. The provisions of this Section 6.7 (Deed in Lieu of Foreclosure) are in addition to, and not in lieu of, the provisions of Section 47C-3-116(f) of the Act.



ARTICLE 7 ADMINISTRATION

7.1 Administration by the Association. The Association shall administer the Condominium, and have the rights and duties with respect thereto, as set out in and subject to the Act and the Condominium Instruments.

7.2 Control by Declarant. Except as provided in Section 47C-3-103(e) of the Act, the Declarant shall have the right to appoint or remove all Officers or Directors of the Board or to exercise powers and responsibilities otherwise assigned to the Association Board or Officers by the Act or the Condominium Instruments until the first to occur of: (i) the expiration of two (2) years after the Declarant has ceased to offer units for sale in the ordinary course of business, (ii) 120 days after the conveyance of seventy-five percent (75%) of the Units (including units which may be created pursuant to special Declarant rights) to unit owners other than Declarant, (iii) two years after any development right to add new units was last exercised, or (iv) the surrender by Declarant of such rights by an express amendment to this Declaration executed and recorded by Declarant, without the need for consent or joinder by any other person. Upon the expiration of the period of Declarant's rights, such rights shall automatically pass to the Owners (including Declarant if Declarant then owns one or more Condominium Units) and a special meeting (which may be the next annual meeting) of the Association shall be called as set forth in the Bylaws. At such special meeting the Owners shall elect a Board of Directors. The power of the Declarant to appoint Directors is limited by Sections 1.3(d), 1.3(j) and 3.3(b) of the Bylaws. If conflicts arise between this provision, the Act and the Bylaws, then the Act and the bylaws shall control.

7.3 Duties and Powers. The duties and powers of the Association shall be those set forth in the Act, this Declaration and the other Condominium Instruments, together with those reasonably implied to effect the purposes of the Association. Except to the extent otherwise required by the Act, this Declaration or the other Condominium Instruments, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, by action through the Officers, without any further consent or action on the part of the Owners. Subject to and in accordance with the provisions or limitations set forth in the Bylaws, each Director and each Officer shall be entitled to be indemnified by the Association in connection with any threatened, pending or completed action, suit or proceeding with respect to which such person was or is a party by reason of the fact that such person is or was a Director or Officer.

7.4. Property. All funds received and title of all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring the same, shall be held for the benefit of the Owners as herein provided and for the purposes herein stated. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated or transferred in any manner except as an appurtenance to a Condominium Unit. In any year in which there is an excess of Assessments over expenditures, such surplus shall be applied in accordance with the provisions of Article 6.

7.5 Rules and Regulations. Without limiting the generality of this Article, the Board of Directors shall have the power and authority to make, amend and revoke reasonable rules



and regulations concerning the use of the Units and the Common Elements as may be set forth in the Bylaws or in supplemental Rules and Regulations for The Villas of Hatteras Landing, a Condominium, as promulgated by the Declarant or the Association from time to time and that shall be available at the front office.

7.6 Professional Management. The Board of Directors may employ a professional management firm to manage the operation and affairs of the Condominium and the Association. Any management firm employed shall be employed pursuant to a written agreement executed on behalf of the Association by its President and Secretary. To the extent permitted by law, the Board of Directors shall be authorized to delegate to such management firm such of the duties and powers of the Association and of its Board of Directors and Officers as the Board of Directors shall determine. The Declarant or any person affiliated with Declarant may be employed as the professional management firm pursuant to this Section.

7.7 Enforcement of Directors Duties. In the event that the Board of Directors shall fail to perform any duty or duties which, under the terms and provisions of the Act, this Declaration, or the other Condominium Instruments, are to be performed by it, any Owner or First Mortgagee who is aggrieved by such failure shall have the right to proceed in equity to compel the Board of Directors to perform such duty or duties. In no event, however, shall any Director have any liability to any Owner or First Mortgagee for any failure by the Board of Directors to perform any such duty or duties, except to the extent provided by the laws of North Carolina.

ARTICLE 8 INSURANCE

8.1 General Obligation and Authority. Pursuant to Section 47C-3-113 of the Act, the Association may be required to obtain and maintain at all times:

- (a) Insurance for all of the insurable improvements on the Submitted Property (with the exception of improvements, and betterments made by the respective Owners or Occupants) against loss or damage by fire or other hazards, and including extended coverage, vandalism, malicious mischief, debris removal, cost of demolition, windstorm and water damage, in an amount consonant with full replacement value of such insurable improvements;
- (b) Any such fidelity coverage against dishonest acts on the part of its Directors, Officers, employees, agents and volunteers responsible for handling funds belonging to or administered by the Association in any amounts as the Board may determine in its sole discretion;
- (c) Comprehensive public liability insurance, in amounts established by the Board of Directors from time to time, but in no event shall such amount be less than \$1,000,000.00 for single limit coverage; and
- (d) Such other types of insurance either required by the Federal, State or any other applicable governmental authority or law or authorized by the Board of Directors from



time to time. Such casualty, liability and fidelity coverage shall be maintained in accordance with and satisfy all of the applicable rules, regulations and provisions of the Federal, State or any other applicable governmental authority. When any policy of insurance has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner by the Officer required to send notices of meetings of the Association.

8.2 Owner's Obligation. Each Owner shall obtain and maintain at all times policies of insurance providing the following coverage:

(a) Property insurance in a sufficient sum to cover the values of all improvements made to the Unit and all personal property therein; and

(b) Liability insurance having policy limits of \$1,000,000.00 per person and \$1,000,000.00 per occurrence and naming the Declarant (during the Declarant Control Period) and the Association as named insureds.

ARTICLE 9

RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

9.1 General. In the event of damage by fire or other casualty to the Submitted Property or any part thereof, the provisions of this Article and Section 47C-3-113 of the Act shall govern the repair and reconstruction. The terms "repair" or "reconstruction" as used herein shall mean repairing or restoring the Submitted Property to substantially the same condition in which it existed prior to the fire or other casualty (excluding improvements and betterments made by an Owner or Occupant) with each Unit and the Common Elements having the same boundaries as before. Any repair or reconstruction may reasonably take into account changes in construction and design techniques and materials and the cost or availability thereof. The term "substantial loss" relative to Units and/or Common Elements serving exclusively a Unit shall mean a loss involving damage or destruction which renders more than two-thirds (2/3rds) of the Units and/or Common Elements serving exclusively a Unit unusable for its intended purpose. The term "substantial loss" relative to the Common Elements not serving exclusively a Unit shall mean a loss involving damage or destruction having a cost of restoration or repair of more than two-thirds (2/3rds) of the replacement cost of the improvements which are damaged or destroyed by casualty.

9.2 Damage and Destruction.

9.2.1 Claims, Adjustments and Repair Estimates. Immediately after any damage or destruction to all or any part of the Submitted Property covered by insurance purchased by the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance with respect to property losses of Owners and obtain reliable and detailed estimates of the cost of repair or reconstruction of such damaged or destroyed property.



9.2.2 Common Elements. In the case of damage or destruction to Common Elements not serving exclusively a Unit, such damage or destruction shall be repaired or reconstructed unless both of the following occur: (i) there is a substantial loss of the Common Elements not serving exclusively a Unit resulting from such damage or destruction and (ii) within sixty (60) days of the date of such casualty, Owners having four-fifths (4/5ths) of the Votes in the Association vote not to repair or reconstruct.

9.2.3 Units. In the case of a casualty causing damage or destruction to a Unit and/or Common Elements serving exclusively a Unit, such damage or destruction (including any damage or destruction to any Common Elements serving exclusively such Unit) shall be repaired or reconstructed unless each of the following occur: (i) there is a substantial loss of all the Units (including any damage or destruction to any Common Elements serving exclusively such Unit); and (ii) within sixty (60) days of such casualty, 100% of the Owners of damaged or destroyed Units and 80% of all Owner's vote and agree not to repair or reconstruct. If both (i) and (ii) occur, then such damaged or destroyed Units shall not be repaired or reconstructed and the provisions of Section 47C-3-113(h) of the Act shall govern and control the ownership of such damaged or destroyed Units. The undivided interest in the Common Elements, votes in the Association and share of liability for Common Expenses appertaining to such Condominium Units shall thenceforth appertain to the remaining Condominium Units on the basis of an equal share per Unit.

9.2.4 Extension of Time. If for any reason the amount of insurance proceeds to be paid as a result of a casualty, or reliable and detailed estimates of the cost of repair or reconstruction of such casualty, are not made available within sixty (60) days after such casualty, then the sixty (60) day period specified above shall be extended until such information is made available; provided, however, that such period of time shall in no event exceed one hundred twenty (120) days after such casualty.

9.2.5 Application of Proceeds: Common Elements and Units Not Repaired. If it is determined in accordance with the provisions hereof that any damaged Common Elements not serving exclusively a Unit shall not be repaired or restored, then the insurance proceeds appertaining thereto shall be divided among the Owners in accordance with their percentage or fractional interests in the Common Elements. If it is determined in accordance with the provisions hereof that any damaged Unit shall not be repaired or restored, then the insurance proceeds appertaining thereto shall be paid to the Owner of such damaged Unit in proportion to the total damage for which proceeds are received, and thereupon such Owner shall have no further right, title or interest in the Condominium. In all cases where there is a Mortgagee endorsement with respect to a Unit, any insurance proceeds shall be disbursed to the Owner and such Mortgagee jointly, who shall use such proceeds as they alone may determine. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee. The Association shall cause the debris to be removed from any area on which was located a damaged Unit or damaged Common Elements which are not to be repaired or restored and shall landscape and restore such area to a clean, safe and attractive condition, and the Board of Directors shall have the right to levy a special Assessment against all of the Owners of the Condominium Units to

raise the funds necessary to defray the costs of such work in excess of any amounts which may be available from any reserve funds of the Association maintained for such purpose.

9.3 Manner of Repair and Reconstruction. All repairs, reconstruction or rebuilding to be made as a consequence of a fire or other casualty shall be made in accordance with the following provisions:

9.3.1 Common Elements. If the damage to be repaired or reconstructed is to the Common Elements, and if the insurance proceeds payable as a result of such damage or destruction is less than ten percent (10%) of the total annual revenues anticipated to be received by the Association under then-current budget of the Association, such repair or reconstruction shall be substantially in accordance with the plans and specifications for such damaged property prior to the occurrence of such damage, or in accordance with such different plans and specification as may be approved for such purpose by the Board of Directors. If the damage to be repaired or reconstructed is to the Common Elements, and if the insurance proceeds available as a result of such damage or destruction is greater than ten percent (10%) of the total annual revenues anticipated to be received by the Association under then-current budget of the Association, such repair or reconstruction shall be substantially in accordance with the plans and specifications for such damaged property prior to the occurrence of such damage, or in accordance with such different plans and specifications as may be approved for such purpose by the Board of Directors; provided, however, that in the event the Board of Directors shall approve plans and specifications for the repair or reconstruction of such damaged property which differ materially from those of the damaged property prior to the occurrence of such damage, such plans and specifications shall be submitted for the approval of a majority of the Association, if a request to such effect is submitted in writing signed by Owners owning at least 20 Units no later than 14 days after the meeting at which the Board of Directors approve such differing plans and specifications.

9.3.2 Units. If the damage to be repaired or reconstructed is to any Unit, such repair, reconstruction or rebuilding shall be undertaken by the Board of Directors and it shall arrange for and supervise the prompt repair and restoration of the Unit, but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the Unitowner in the Unit. Notwithstanding the foregoing, each Unitowner shall have the right to supervise the interior redecorating of this own Unit

9.3.3 Responsibility for Repair or Reconstruction. All of the work of repairing or reconstructing any portion of the Submitted Property, the damage to or destruction of which resulted in the payment of any insurance proceeds under any insurance policy maintained by the Association, shall be the responsibility of the Association and shall be performed under the supervision of the Board of Directors. In discharging such supervisory responsibility, the Board of Directors shall be authorized, but shall not be obligated, to employ as its agent or consultant such building supervisor(s), engineer(s) or architect(s) as the Board of Directors shall determine. Any fees which shall be payable to any such building supervisor, engineer, or architect as shall be employed by the Board of Directors shall be a Common Expense of the Association.



9.4 Costs of Repair and Reconstruction.

9.4.1 Common Elements. The costs of repairing or reconstructing any portion of the Common Elements not exclusively serving any Unit which shall be damaged or destroyed shall be paid with any insurance proceeds which shall be paid to the Association on account of such damage or destruction. If such insurance proceeds, together with any amounts as may be available from any reserve funds maintained by the Association for such purposes, are not sufficient to defray such costs of repair or reconstruction, then the Board of Directors shall levy a special Assessment against all of the Owners of the Units to raise the excess funds necessary to defray such costs.

9.4.2 Units and Common Elements Exclusively Serving Units. The costs of repairing or reconstructing each Unit which shall be damaged or destroyed, together with any portion of the Common Elements exclusively serving such Unit which shall be damaged or destroyed, shall be paid with the insurance proceeds which shall be paid to the Association on account of such damage or destruction for such Unit. If any amounts shall remain after all of the costs and expenses of repairing and reconstructing the Unit are paid, such amounts shall be paid jointly to the Owner and his Mortgagee. If the amount held by the Association for such Unit is not sufficient to defray such cost of repair and reconstruction, the Board of Directors shall levy a special Assessment against the Owners of the Units so involved to raise the excess funds necessary to defray such costs.

ARTICLE 10 AESTHETICS REVIEW, USE RESTRICTIONS AND SALE OF UNITS

To assure a community of congenial Owners and thus protect the value of the Condominium Units, the Submitted Property shall be subject to the restrictions set forth in this Article and in the rules and regulations of the Association.

10.1 Approval Required for Changes. To preserve the architectural appearance of the Condominium, no construction, painting or other changes of any nature whatsoever shall be commenced or maintained by any Owner other than Declarant with respect to any portion of the Condominium, including any Limited Common Elements, nor shall any addition to or change or alteration therein be made, unless and until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted and approved in writing as to harmony of design and location in relation to surrounding structures and topography by the Board of Directors or by an aesthetics review committee appointed by the Board of Directors. An Owner may make improvements and alterations within his Unit; provided, however, that no Owner shall make any structural alterations in a Unit, or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety, soundness or structural integrity of that Unit or any other Unit or otherwise materially lessen the support of any portion of the Condominium. No Owner shall impair any easement without first obtaining the written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists. Any alteration or impairment of the easements granted to



or reserved by the Declarant or the Villas of Hatteras Landing Owners Association, Inc. shall first have the approval of the beneficiary of such easement.

10.2 Lighting. The design, type, location, size, intensity and color of all exterior lights (including both those mounted as part of the original design of the Submitted Property or otherwise in place at the time of the conveyance of a Unit to an Owner and those mounted with the consent of the Board of Directors) shall be subject to the prior written approval of the Board of Directors.

10.3 Uses and Purposes. Except for Declarant's rights to use a portion of the Property as a commercial hotel or such as other rights as set forth herein, all Units shall be, and the same hereby are, restricted to residential use only and the occupancy thereof shall be subject to such restrictions as the Board of Directors may establish pursuant to the rules and regulations of the Association. Short-term and long-term residential rentals are considered a "residential use" and specifically approved.

10.4 Business Activities and Signs. No "For Sale" or "For Rent" signs or other signs or advertising posters of any kind shall be maintained or permitted on any portion of the Submitted Property. Notwithstanding the foregoing, the provisions of this Section shall not apply to any signs maintained on the Submitted Property by Declarant, its agents, representatives or assigns, during the period that Declarant has any Unit for sale, or to the First Mortgagee of any Unit being sold pursuant to a Foreclosure sale.

10.5 Pets. No pets shall be kept or maintained on any portion of the Submitted Property except as may be permitted by the Declarant or Association Board. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Elements or Limited Common Elements. If pets are permitted by the Declarant or Association Board, then pets shall be under leash when walked or exercised in any portion of the Common Elements and no pets shall be permitted to leave droppings on any portion of the Common Elements and the Owner of such pet shall immediately remove the droppings.

10.6 Use of Common Elements. The use and enjoyment of the Common Elements by the Owners and their Occupants shall be subject to such reasonable rules and regulations as may be made and amended from time to time in accordance with Section 7.5 (Rules and Regulations) of this Declaration. This Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

10.7 Antennas. No antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Common Elements, except as have been approved or installed by the Declarant or the Association or except as permitted under applicable Federal, State or local law.

10.8 Motor Vehicle, Trailers, Boats, Etc. Automobiles shall be operated and parked only upon those portions of the Submitted Property designated for such purpose on the Plat and Plans, or in such other areas as may be provided by the Declarant or Association in any rules or



regulations adopted from time to time. Although not expressly prohibited hereby, the Board of Directors or Association may prohibit the parking of personal-use vehicles for extended periods of time and further may prohibit mobile homes, motor homes, truck campers, trailers of any kind, motorcycles, motor scooters, motorized bicycles, mopeds, motorized go-carts and other such conveyances, or any of them, from being kept, placed, stored, maintained or operated upon any portion of the Submitted Property. No item of personal property or any kind shall be parked within the right-of-way of any street within The Villas of Hatteras Landing.

10.9 Nuisances. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Submitted Property except in areas and/or containers specifically designated for such purpose, nor shall any odors be permitted so as to render any portion of the Submitted Property unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Submitted Property. The Declarant or Association is permitted to fine Owners for the litter of the Owner, lessees, guests, agents or invitees. Said fine shall constitute an Assessment and shall be enforceable in accordance with other sections herein pertaining to Assessments. No nuisance shall be permitted to exist or operate upon any portion of the Submitted Property so as to be offensive or detrimental to persons using or occupying other portions of the Submitted Property. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horn, whistles, bells or other sound devices, except child safety or security devices used exclusively for child safety or security purposes, shall be located, used or placed on the Submitted Property.

10.10 Prohibited Activities. No noxious or offensive activities shall be carried on in any Unit or in any part of the Common Elements. Each Owner and Occupant shall refrain from any act or use of his Unit or the Common Elements which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the other Owners and Occupants, or which could result in the cancellation of insurance on any Unit or any portion of the Common Elements, or which would be in violation of any law or governmental code or regulation. The assembly and disassembly of boats, motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any portion of the Submitted Property except as permitted by the Declarant or Association.

10.11 Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Submitted Property shall be observed and are hereby incorporated by reference herein as if set forth word for word. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provisions of this Declaration, the more restrictive provisions shall apply.

10.12 Appearance. In order to protect the first-class quality and reputation of the Condominium, outside clothes lines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained on any portion of the Submitted Property, nor shall any clothing, rugs or any other item be hung on any portion of the Common Elements.

10.13. Sale Period. Notwithstanding any provisions contained in this Declaration to the contrary, during the period of the sale of the Units it shall be expressly permissible for Declarant, its



contractors, agents, employees, assigns and representatives, to maintain and carry on, upon such portion of the Submitted Property as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion and sale of the Units, including, but without limitation, business offices, signs, model Units, and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use any Units owned by Declarant as model Units, such model Units being located and described as provided herein and in the other Condominium Instruments.

10.14 Sale or Leasing. The right of any Owner, including Declarant, to sell, transfer, convey, mortgage, encumber or pledge the Unit(s) owned by such Owner shall not be subject to any right of first refusal or any similar restriction in favor of the Association or any other Owner.

10.15 Pool. Owners are cautioned that the pool and surrounding concrete areas are often dangerous even during normal use. There is a high risk of serious injury or death from drowning and slipping. Children must be supervised at all times.

10.16 Telephone Service. The present construction of the telephone system of the Condominium permits telephone calls from units to be local only. Long distance telephone calls must be made via calling card or through the Condominium switchboard.

10.17 Water. Units will not have separate meters. Usage of water shall be billed as a part of the overall dues and assessments according to the respective interests in the Common Elements. There shall be no attempt on the part of the Association to apportion higher assessments against Unitowners or units that consume greater quantities of water.

10.18 Electricity. Units will not have separate meters. Usage of electricity shall be billed as a part of the overall dues and assessments according to the respective interests in the Common Elements. There shall be no attempt on the part of the Association to apportion higher assessments against Unitowners or units that consume greater quantities of electricity.

ARTICLE 11 GENERAL PROVISIONS

11.1 Amendment. This Declaration may be amended at any time and from time to time by the affirmative Vote of Owners having at least 67% of the total Vote of the Association and as otherwise provided by North Carolina law; provided, however, that during such time as Declarant has the right to appoint and remove members of the Board of Directors and Officers pursuant to Section 7.2 (Control by Declarant) such amendment shall require the agreement of both Declarant and Owners to which 67% of the Votes in the Association appertain, exclusive of any Vote or Votes appertaining to any Units then owned by Declarant. So long as the same shall not (a) adversely affect the title to any Unit, (b) change the percentage of undivided ownership interest in and to the Common Elements appurtenant to any Unit, (c) materially alter or change any Owner's right to the use and enjoyment of his Unit or the Common Elements as set forth in this Declaration,



or (d) otherwise make any material change in this Declaration, each Owner agrees that, if requested to do so, such Owner will consent to the amendment of the Condominium Instruments, (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable governmental statute, rule, regulation, including without limitation the provisions of the Act, or judicial determination which shall be in conflict therewith, or (ii) if any such amendment is necessary to enable any governmental agency to insure mortgage loans on the Units based on the statutes, laws, rules or regulations applicable to or promulgated by such agency. Except as expressly permitted or required by the Act and this Declaration, any amendment to this Declaration which would change the boundaries of any Unit, the undivided interest in the Common Elements, the number of Votes in the Association or the liability for Common Expenses appertaining to any Unit shall be approved in writing by all Owners. Any provisions in this Declaration which may be construed to the contrary notwithstanding, any amendment to this Declaration, which would change, alter, modify or rescind any right, title, interest or privilege herein expressly granted to any Mortgagee shall require the prior written approval of such Mortgagee. Amendments to this Declaration or the other Condominium Instruments may be proposed by Declarant, by the Board of Directors, or by petition signed by Owners having at least forty-five percent (45%) of the total Votes of the Association. Agreement of the required majority of Owners to any amendment of the Condominium Instruments shall be evidenced by the certification of the Secretary of the Association. Any such amendment of the Condominium Instruments, including this Declaration, shall become effective only when recorded or at such later date as may be specified in the amendment itself. The written consent of any Mortgagee required with respect to such amendment shall also be recorded with such amendment.

11.2 Eminent Domain. In the event that all or part of the Submitted Property shall be taken by any authority having the power of eminent domain, the allocation of the award for such condemnation and all related matters, such as the reallocation of undivided interests in the Common Elements, liabilities for Assessment and Votes, shall be handled as follows:

11.2.1 If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any First Mortgage on a Unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration or of any other Condominium Instrument establishing the Condominium will entitle the Owner or other person to priority over any Mortgagee with respect to the distribution of the proceeds of any award or settlement relating to such Unit.

11.2.2 In the event all or any part of the Submitted Property shall be taken in condemnation or by eminent domain, each Owner hereby grants an irrevocable power of attorney to the Association to represent such Owner in any and all condemnation proceedings, negotiations, settlements and agreements with the condemning authority. The award for such taking shall be payable to the Association for the use and benefit of the Owners and their respective Mortgagees as their interest may appear and shall be disbursed by the Board as hereinafter provided.



11.2.3 If the taking is confined to the Common Elements, the Board of Directors shall arrange for restoration of the remaining Common Elements and the Board of Directors shall disburse the proceeds of the condemnation award in the same manner as required for the disbursement of insurance proceeds where damage or destruction to the Common Elements is to be repaired or reconstructed, as provided in Article 9 hereof.

11.2.4 If the taking includes any part of a Unit, whether or not there is included in the taking any part of the Common Elements, such taking shall be deemed to be and shall be treated as damage or destruction which shall not be repaired or reconstructed as provided in Article 9 hereof, whereupon:

a. The Board of Directors, using the proceeds of such condemnation award, shall acquire, on behalf of the remaining Owners, the Unit(s) of the Owner or Owners whose Unit(s) have been taken in whole or in part, at a price equal to the lesser of (1) the fair market value of such Unit(s) as of the date immediately preceding the condemnation thereof or (2) the amount of the condemnation award allocated to the particular Unit to be acquired. The "fair market value" as used herein shall mean such price as is determined by Majority vote of three (3) appraisers, one of whom shall be selected by the Owner or Owners affected, one of whom shall be selected by the Board of Directors and the third of whom shall be selected by the two (2) appraisers so selected. All appraisers so selected shall be members of the American Institute of Real Estate Appraisers (or any successor association or body of comparable standing if such institute is not then in existence), disinterested, have at least ten (10) years experience in the appraisal of real estate, and be familiar with property values in Dare County, North Carolina.

b. After acquisition of the Unit(s) as aforesaid, the undivided interest in the Common Elements, Votes of the Association and share of liability for Common Expenses appertaining to such Unit(s) shall thenceforth appertain to the remaining Unit(s) on the basis of an equal share per Unit. The Board of Directors shall determine the method of distributing the remainder of the condemnation award, if any.

11.3 Rights of Third Parties. This Declaration shall be recorded pursuant to the provisions of the Act for the benefit of Declarant, the Owners and their Mortgagees as herein provided, and by such recording, the Owners shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration as provided herein or as allowed by the Act without the consent, permission or approval of any adjoining owner or third person except as limited by Article 11.4.

11.4 Termination. The Common Elements shall remain undivided, and unless the Condominium form of ownership hereby established is terminated in accordance with Section 47C-2-118 of the Act, no Owner nor any other person shall bring any action for partition or division of the whole or any part of any Unit or of the whole or any part of the Common Elements. The Condominium may be terminated or abandoned only by the agreement of all Owners, provided that



all holders of Mortgages encumbering the Unit(s) consent thereto and agree as may be required by Section 47C-2-118 of the Act.

11.5 Enforcement. Each owner shall comply strictly with the provisions of the Condominium Instruments and rules and regulations of the Association. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Association or, in a proper case, any aggrieved Owner or Owners, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. In addition to all other remedies, the Association, or a duly authorized agent thereof, shall have the right to enter upon any portion of the Common Elements including any Limited Common Elements, where a violation exists and, at the expense of the violating Owner, abate or remove any erection, thing or condition that may be or exist contrary to the intent and meaning of the Condominium Instruments or rules and regulations, if after notice and hearing as set forth in the Bylaws, it shall not have been corrected by such Owner. Neither the Association, nor its agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. Should the Association employ legal counsel to enforce any of the foregoing or any other rights or remedies of the Association, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of the Condominium Instruments and rules and regulations is essential for the protection of present and future Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that the Association or, in any proper case, any aggrieved Owner or Owners, in addition to all other remedies, may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach. No delay, failure or omission on the part of the Association or any aggrieved Owner or Owners in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association or its Officers or Directors for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, of the provisions and regulation, however long continued, or for the imposing of provisions which may be unenforceable.

11.6 Exhibits. All exhibits referred to in and attached to this Declaration or any other Condominium Instrument are hereby incorporated in this Declaration or such other Condominium Instrument in full by this reference.

11.7 Duration. Unless the Condominium is terminated as herein otherwise provided, the provisions of this Declaration shall run with and bind the land, shall be binding upon and inure to the benefit of all Owners and Mortgagees, their heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect perpetually to the extent permitted by North Carolina law.

11.8 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 the Board of Directors, will best effect the intent of the general plan of the



Condominium. 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 effective date of this Declaration shall be the date it is filed for record. In the event of any conflicts or inconsistencies between the Act, this Declaration or the Bylaws, the terms and provisions of the Act and this Declaration, in that order, shall prevail.

11.9 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

11.10 Rights of Mortgagees and Unit Owners. In addition to the rights of Mortgagees elsewhere provided, each Mortgagee shall: (a) be entitled to written notice from the Association of any default by the Owner of the Unit mortgaged in the performance of his obligations under the Condominium Instruments which is not cured within sixty (60) days specifically including any delinquency in payment of an Assessment; (b) be entitled to receive written notice of any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which a Mortgagee holds a Mortgage; (c) be entitled to receive thirty (30) days prior written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (d) be entitled to receive written notice of any proposed action which would require the consent of a specified percentage of the Mortgagees; and (e) be furnished copies of annual financial reports within 120 days after the end of the Association's fiscal year. The above is limited, however, in that the Mortgagee is entitled to the above information only so long as such Owner or Mortgagee shall first file with the Association a written request (setting forth the name of such Owner or Mortgagee and the Unit Designation of the Unit with respect to which such request is made) that notices of default, and copies of financial reports be sent to a named agent or representative of the mortgagee or owner at an address stated in such notice. Further, each Mortgagee and Owner shall, upon request, be entitled to inspect the books, records, and financial statements of the Association (including the Condominium Instruments and other documents) during normal business hours. Any First Mortgagees shall, upon written request, be entitled to a financial statement of the Association for the immediately preceding fiscal year.

11.11 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of the Declaration are declared to be severable.

11.12 Captions. The captions of each Article and Section hereof refers to its contents and are inserted only for convenience and are in no way to be construed as defining, extending or otherwise modifying or adding to the particular Article or Section.

11.13 Restrictions on Other Actions. Notwithstanding anything to the contrary contained in the Condominium Instruments, except as provided by the Act in case of substantial loss to the Units or termination and as provided herein in the case of condemnation, termination,



partition or in the case of substantial loss to the Common Elements or during the Declarant Control Period, unless at least two thirds (2/3rds) of the First Mortgagees (based upon one vote for each first mortgage owned) and Owners (other than the Declarant) of the Units have given their prior written approval, neither the Association nor the owners shall be entitled to:

11.13.1 Except for special Assessments levied pursuant to Section 6.3 hereof, and except for the distribution of hazard insurance proceeds pursuant to paragraph 9.3.2 hereof, change the prorata interest or obligations of any Unit for the purpose of: (a) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (b) determining the prorata share of ownership of each Unit in the Common Elements.

11.13.2 By act or omission, seek to encumber, sell or transfer the Common Elements, except in the case of reassignment of Limited Common Elements pursuant to Section 3.5 hereof (neither the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium nor the transfer, sale or encumbrance of an undivided interest in the Common Elements, as an appurtenance to a Unit, shall be deemed a transfer within the meaning of this subparagraph).



IN WITNESS WHEREOF, Declarant has caused this instrument to be executed under seal pursuant to due authority as of the day and year first above written.

Harborside Investment Associates, LLC

By: [Signature] (SEAL)

Attest: [Signature]

STATE OF VIRGINIA
COUNTY OF VIRGINIA BEACH
CITY

MAY 21, 2004

I, a Notary Public of the aforesaid State and County, do hereby certify that Thomas J. Lyons, Jr. & Timothy J. Stiffler personally came before me this day and acknowledged that he is the Manager of Harborside Investment Associates, 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 the official act of the company.

Debara K. Smith
NOTARY PUBLIC

MY COMMISSION EXPIRES: Jan 31, 2006

NORTH CAROLINA, DARE COUNTY

The foregoing certificate(s) of

Public Debara K. Smith a Notary

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.

Barbara Gray, Register of Deeds for Dare County

By: Vanella McMan Assistant Register of Deeds



Exhibit "A"

All that certain parcel of land situated in the Village of Hatteras, Hatteras Township, Dare County, North Carolina and more particularly described as follows:

BEGINNING at a point lying in and marking the northeasternmost corner of the lands herein described, and also lying in the West margin or right of way of NC 12, and also lying South 05 deg. 30 min. 41 sec. West 95.65 feet from a concrete monument lying and marking the southeasternmost corner of the lands of Teach's Lair Marina, LLC and the northeasternmost corner of the lands of Hatteras Landing Homeowners Association, Inc. (Plat Cabinet D, Slide 310, and Deed Book 662, page 352, Dare Registry).

THENCE FROM THE POINT OR PLACE OF BEGINNING SO LOCATED and running along the West margin or right of way of NC 12 the following courses and distances:

South 05 deg. 30 min. 41 sec. West 69.10 feet to a rebar;

South 05 deg. 30 min. 41 sec. West 87.82 feet to a p.k. nail;

Along a gentle curve to the westsouthwest having a radius of 688.60 feet, a chord course of South 27 deg. 43 min. 15 sec. West, a chord distance of 520.57 feet to a p.k. nail lying in and marking the southernmost corner of the lands herein described;

Thence turning and running along an agreed line (See Boundary Agreement recorded in Book 1565, Page 498, Dare Registry) being the northeast line of the lands now or formerly owned by Paley-Midgett Company, LLC (Plat Cabinet D, Slide 306 and Deed Book 1093, Page 402, Dare Registry) North 43 deg. 44 min. 12 sec. West 184.20 feet to a p.k. nail; thence turning and continuing along the Paley-Midgett agreed line South 46 deg. 15 min. 48 sec. West 8.50 feet to a p.k. nail; thence turning and continuing along the Paley-Midgett agreed line North 43 deg. 44 min. 12 sec. West 315.70 feet to a rebar; thence turning running along the line of the Hatteras Landing Homeowners Association, Inc. to the point or place of beginning the following courses and distances:

North 46 deg. 05 min. 14 sec. East 166.67 feet to a rebar;

thence South 59 deg. 37 min. 59 sec. East 56.82 feet to a point;

thence South 16 deg. 39 min. 42 sec. East 27.11 feet to a point;

thence South 11 deg. 02 min. 01 sec. East 15.19 feet to a point;

thence South 14 deg. 17 min. 00 sec. East 25.18 feet to a point;

thence South 56 deg. 28 min. 28 sec. East 27.60 feet to a point;

thence South 18 deg. 28 min. 52 sec. East 13.92 feet to a point;

thence North 57 deg. 14 min. 53 sec. East 14.17 feet to a point;

thence North 26 deg. 43 min. 37 sec. West 13.88 feet to a point;

thence North 47 deg. 41 min. 47 sec. West 22.83 feet to a point;

thence North 13 deg. 44 min. 39 sec. East 13.33 feet to a point;

thence North 30 deg. 57 min. 21 sec. East 80.69 feet to a point;

thence North 37 deg. 10 min. 46 sec. West 2.12 feet to a point;

thence North 02 deg. 42 min. 00 sec. West 21.14 feet to a point;

thence South 67 deg. 08 min. 48 sec. East 37.11 feet to a point;

thence North 56 deg. 37 min. 25 sec. East 54.11 feet to a point;

thence North 84 deg. 34 min. 19 sec. East 19.45 feet to a point;



thence North 82 deg. 55 min. 44 sec. East 30.54 feet to a point;
thence North 60 deg. 50 min. 46 sec. East 72.01 feet to a point;
thence North 60 deg. 22 min. 57 sec. East 36.98 feet to a point;
thence North 41 deg. 02 min. 01 sec. East 53.12 feet to a point;
thence North 53 deg. 11 min. 56 sec. East 23.46 feet to a point;
thence North 65 deg. 20 min. 55 sec. East 16.07 feet to a point;
thence South 84 deg. 29 min. 19 sec. East 72.36 feet to the point or place of
BEGINNING.

EXCEPTED FROM THE ABOVE AND NOT SUBMITTED TO THE ACT ARE THE FOLLOWING PARCELS OF LAND OR AREAS OF REAL ESTATE. THESE PARCELS OR AREAS ARE ESSENTIALLY THE MIDDLE BUILDING (BUILDING "B") CONTAINING HOTEL UNITS AND THE SECOND FLOOR OF THE MAIN OFFICE BUILDING WHICH INCLUDES HOTEL UNIT 237 AND THE TOWER.

PARCEL ONE EXCLUDED FROM THE ACT (BUILDING B):

All that certain parcel of land and the improvements thereon commonly shown as Building B on the below-referenced plat and more particularly described as follows:

BEGINNING at Control Corner "B" which lies the North 32 deg. 38 min. 26 sec. West 290.41 feet from Control Corner "D" as shown on the below-referenced plat; THENCE FROM THE BEGINNING POINT SO LOCATED and running along the line of the condominium created by this Declaration North 43 deg. 44 min. 12 sec. West 122.90 feet to a point; thence turning and running along the condominium North 46 deg. 15 min. 48 sec. East 57.90 feet to a point; thence turning and running along the condominium South 43 deg. 44 min. 12 sec. East 122.90 feet to a point; thence turning and running along the condominium South 46 deg. 15 min. 48 sec. West 57.90 feet to the point of place of BEGINNING.

PARCEL TWO EXCLUDED FROM THE ACT (2ND FLOOR OF OFFICE AND ALL OF TOWER [including the catwalk]):

All that certain parcel of land or area of real estate and the improvements thereon commonly shown as all those areas above the first floor of the Office, Housekeeping & Maintenance Building and the entire area of the tower (including the catwalk) from the ground plane described below to the top of the roof. These areas are shown on the below-referenced plat and more particularly described as follows:

a. As to the unit area, the lower horizontal boundary of the area excluded from the Act is the horizontal plane of the upper surface of the sub-floor of the area on page 3 of 4 of the below referenced condominium plat labeled as "Unit 237" and "POSSIBLE FUTURE PHASE NEED NOT BE ADDED". The upper



horizontal boundary is the variable height of the uppermost surface of the roof. The perimetrical boundaries of the Unit 237 area are described as follows:

BEGINNING at a point lying in and marking the northwesternmost corner of the excluded Unit 237, said point lies the following courses and distances from Control Corner "C":

North 43 deg. 44 min. 12 sec. West 45.50 feet; and

North 46 deg. 15 min. 48 sec. East 102.56 feet.

THENCE FROM THE BEGINNING POINT SO LOCATED and running North 46 deg. 15 min. 48 sec. East 25.94 feet; thence turning and running South 43 deg 44 min 12 sec East 5.40 feet; thence North 46 deg 15 min 48 sec East 4.50 feet; thence South 43 deg 44 min 12 sec East 6.68 feet; thence South 46 deg 15 min 48 sec West 4.50 feet; thence South 43 deg 44 min 12 sec East 6.36 feet; thence North 46 deg 15 min 48 sec East 4.50 feet; thence South 43 deg 44 min 12 sec East 6.68 feet; thence South 46 deg 15 min 48 sec West 4.50 feet; thence South 43 deg 44 min 12 sec East 6.36 feet; thence North 46 deg 15 min 48 sec East 4.50 feet; thence South 43 deg 44 min 12 sec East 6.68 feet; thence South 46 deg 15 min 48 sec West 4.50 feet; thence South 43 deg 44 min 12 sec East 6.36 feet; thence North 46 deg 15 min 48 sec East 4.50 feet; thence South 43 deg 44 min 12 sec East 6.68 feet; thence South 46 deg 15 min 48 sec West 4.50 feet; thence South 43 deg 44 min 12 sec East 4.73 feet; thence North 46 deg 15 min 48 sec East 0.50 feet; thence South 43 deg 44 min 12 sec East 10.80 feet; thence South 46 deg 15 min 48 sec West 5.00 feet; thence South 43 deg 44 min 12 sec East 10.77 feet; thence South 46 deg 15 min 48 sec West 13.04 feet; thence North 43 deg 44 min 12 sec West 1.30 feet; thence South 46 deg 15 min 48 sec West 3.60 feet; thence North 43 deg 44 min 12 sec West 6.14 feet; thence South 46 deg. 15 min 48 sec West 4.50 feet; thence North 43 deg 44 min 12 sec West 6.68 feet; thence North 46 deg 15 min 48 sec East 4.50 feet; thence North 43 deg. 44 min. 12 sec. West 56.96 feet; thence South 46 deg. 15 min. 48 sec. West 4.80 feet; North 43 deg. 44 min. 12 sec. West 6.42 feet to the point or place of BEGINNING.

b. As to the tower area, the lower horizontal boundary is the horizontal plane of the upper surface of the sub-floor of the tower area on the ground level. The upper horizontal boundary is the variable height of the uppermost surface of the roof. The perimetrical boundaries of the tower are described in the above exclusion description for Unit 237.

The lands herein described are the lands declared as The Villas of Hatteras Landing Condominium and are further shown and described on a plat or map entitled, "As-Built Survey, HARBORSIDE INVESTMENT ASSOCIATES, LLC / THE VILLAS OF HATTERAS LANDING CONDOMINIUM", prepared by Manson Ray Meekins, PLS, dated May 3, 2004, and recorded in Unit Ownership File 6 at Slides 25, 26, 27, 28, 29, 30, 31, and 32. Dare County Registry.