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DORRIS A. FRY  
REGISTER OF DEEDS  
DARE COUNTY, N.C.

DECLARATION OF ESTABLISHMENT OF CONDITIONS  
RESERVATIONS AND RESTRICTIONS

HERITAGE POINT  
Township of Nags Head  
County of Dare  
State of North Carolina

THIS DECLARATION is made this 17th day of March, 1992, by RIAL CORPORATION, a North Carolina Corporation, as the owner in fee simple of the real estate in Nags Head Township, Dare County, North Carolina.

The Declarant desires to create certain restrictions and restrictive covenants which shall be considered covenants running with the land.

ARTICLE I  
SUBMISSION

Section 1.1. DECLARANT; PROPERTY; COUNTY: RIAL CORPORATION, a North Carolina Corporation (the "Declarant"), owner in fee simple of the Real Estate described in Exhibit "A" attached hereto, located in Roanoke Island, Nags Head Township, Dare County, North Carolina, hereby submits the Real Estate to the following conditions, reservations and restrictions.

Section 1.2. PHASED PLAN OF DEVELOPMENT: Declarant proposes to develop the Real Estate in three (3) or more phases. This Declaration shall become effective as to that portion of the Real Estate embraced by each phase of development as the Plat with respect thereto is recorded in the Office of the Recorder of Deeds in and for Dare County, North Carolina.

Section 1.3. ADDITIONAL PLAN OF DEVELOPMENT: Declarant reserves the right to place additional reservations and restrictions on each subsequent phase of development, more particularly those phases which abut bodies of water.

ARTICLE II  
DEFINED TERMS

Section 2.1. TERMS DEFINED: All capitalized terms used herein shall have ascribed to them the following meanings, otherwise defined herein.

- a. "Association" means the Heritage Point Association.
- b. "Board of Directors" means the Board of Directors of the Association.
- c. "Building(s)" means any building(s) constructed or erected on the Real Estate.
- d. "Declarant" means the Declarant described in Section 1.1 above and all successors to any of Declarant's rights.
- e. "Declaration" means this document, as the same may be amended from time to time.
- f. "Open Space(s)" means the Open Space(s) as shown on the Plat(s), and all buildings and structures erected thereon and improvements thereto. Open Space(s) shall include the boat dock and boat basin.
- g. "Plat(s)" means the plat(s) recorded, or to be recorded, subdividing the Real Estate and made a part hereof, as the same may be amended from time to time.
- h. "Real Estate" means the real estate described in Exhibit "A".
- i. "Lot" means a lot as described in the Plats.
- j. "Lot Owner" means the owner in fee simple of any Lot, but shall not include the Declarant or any person or persons purchasing a Lot under contract (until such contract is fully performed and legal title conveyed of record).
- k. "Common Expenses" means the expense of owning and maintaining the Open Spaces, drainage and storm water detention facilities within or appurtenant to the Real Estate, and of providing all common community services required or desired for the general use and benefit of all Lot Owners.

**ARTICLE 3**  
**EASEMENTS**

Section 3.1. **EASEMENTS**: Declarant hereby creates the following easements:

a. **EASEMENT FOR SALES OFFICES, MANAGEMENT OFFICES AND MODELS**: Declarant shall have the right to maintain sales offices, management offices and models on the Real Estate and to relocate such models, management offices and sales offices from time to time anywhere within the Real Estate. Declarant reserves the right to place models, management offices and sales offices on any portion of the Open Spaces in such manner, of such size and in such locations as Declarant deems appropriate. Declarant may from time to time relocate models, management offices and sales offices to different locations within the Real Estate. Upon the relocation of a model, management office or sales office on the Open Spaces, Declarant may remove all personal property and fixtures therefrom. Any fixtures not so removed shall be deemed part of the Open Spaces, and any personal property not so removed shall be deemed the property of the Association.

b. **EASEMENT FOR ADVERTISING SIGNS**: Declarant shall have the right to maintain on the Real Estate such advertising signs as Declarant in its sole discretion may deem appropriate, provided that such signs comply with applicable governmental requirements. Declarant may from time to time relocate such advertising signs.

Section 3.2. **UTILITY EASEMENTS**: The Real Estate shall be, and is hereby made subject to easements in favor of the Declarant, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Real Estate. The easements created in this Section 3.2 shall include, without limitation, rights of Declarant, or the providing utility or service company, or governmental agency or authority, to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electric wires, conduits and equipment and ducts and vents over, under, through, along and on the Lots, street rights-of-way and Open Spaces. Notwithstanding the foregoing provision of this Section 3.2, unless approved in writing by the

Lot Owner or Lot Owners affected thereby, any such easement through a Lot shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Lot by the Declarant, or as shown on the Plats, or so as not to materially interfere with the use or occupancy of the Lot or any Building by its occupants.

Section 3.3. EASEMENT FOR ACCESS TO REAL ESTATE: Declarant reserves a non-exclusive perpetual right of access and easement on, over and under those portions of the Open Spaces for the purpose of pedestrian and vehicular ingress, egress and regress to all or any part of the Real Estate, including the right to modify the location of improvements to the Open Spaces to facilitate such ingress, egress and regress, including without limitation the removal of obstructions to the exercise of such rights of ingress, egress and regress, and the grading or re-grading of landscaped areas of the Open Spaces.

Section 3.4. DECLARANT'S EASEMENT TO CORRECT DRAINAGE: Declarant reserves an easement on, over and under those portions of the Open Spaces for the purpose of maintaining and correcting drainage of surface water in order to maintain reasonable standard of health, safety and appearance. The easement created by this Section 3.4 expressly includes the right to cut any trees, bushes or shrubbery, to grade the soil, or to take any other action reasonably necessary to achieve this purpose, following which the Declarant shall restore the affected property as closely to its original condition as practicable.

Section 3.5. DECLARANT'S EASEMENT FOR DEVELOPMENT OF REAL ESTATE: Declarant reserves an easement on, over and under those portions of the Open Spaces for all purposes relating to the construction, development, leasing, and sale of improvements on the Real Estate. This easement shall include without limitation, the right of vehicular and pedestrian ingress and egress, the right to park motor vehicles and to engage in construction and marketing activities of any nature whatsoever, including the movement and storage of building materials and equipment, the conduct of sales, leasing and management activities, the maintenance of models and offices and the erection and maintenance of directional and promotional signs.

Section 3.6. TERMINATION OF EASEMENTS: The easements created by Sections 3.1, 3.2 and 3.5 hereof shall terminate upon the conveyance by Declarant of all of the Lots on the Plats embracing all of the Real Estate.

Section 3.7. EASEMENT FOR USE OF COMMON SPACES:

a. GRANT OF EASEMENT: Each Lot Owner and each person lawfully residing on the Real Estate is hereby granted a non-exclusive perpetual right and easement of access to and enjoyment in common with others of the Open Spaces.

b. EXTENT OF EASEMENT: The rights and easements of access and enjoyment created hereby shall be subject to the right of the Association to adopt rules and regulations governing the use of the Open Spaces.

c. DOCK/BOAT BASIN EASEMENT: Each Lot Owner shall have a right to obtain one (1) boat slip from the Association. This right cannot be assigned, transferred or conveyed. This right is limited only to Lot Owners in Heritage Point and to no others.

ARTICLE 4  
USE RESTRICTIONS

Section 4.1. USE AND OCCUPANCY OF LOTS & BUILDINGS: The occupancy and use of Lots and Buildings shall be subject to the following restrictions:

a. RESIDENTIAL USE: No part of the Real Estate shall be used for other than housing and the related common purposes for which the planned residential development was designed. Each Lot or any two or more adjoining Lots used together shall be used as a residence for a single family or such other uses permitted by this Declaration and for no other purposes. If zoning regulations permit professional activities to be conducted within the Lots, application may be made by a Lot Owner to the Declarant for approval to commence such newly permitted use of his Lot. Each such application shall be considered by the Declarant on an individual basis. Once the Declarant has given its approval to a particular use of a Lot, it may not revoke such approval so long as the nature and scope of the approved use remains unchanged. No Building or structure intended for or adapted to business purposes, and no apartment house, double house, lodging house, rooming house, hospital, sanatorium or doctor's office, or other multiple-family dwelling shall be erected, placed, permitted, or maintained on such premises, or on any part thereof. No improvement or structure whatever,

other than a first class private dwelling house, patio walls, underground swimming pool, and customary outbuilding, garage, servants' quarters, or guest house may be erected, placed, or maintained on any Lot in the Real Estate. No Lot Owner shall permit his Lot to be used or occupied for any prohibited purpose.

b. COMMERCIAL ACTIVITIES: Except as set forth in subsection (a) above, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Real Estate; provided, however, that nothing contained in this subsection shall be construed to prevent or prohibit a Lot Owner from maintaining his personal professional library, keeping his personal business or professional records or accounts, handling his personal business or professional telephone calls or conferring with business or professional associates, clients or customers, in his Lot.

c. PETS: No animals, livestock, fowl or poultry of any kind shall be raised, bred, or kept on any Lot or in the Open Spaces, except household pets not to exceed three (3) for the pleasure and use of the occupants, subject to Rules and Regulations adopted by the Declarant, which Rules and Regulations may exclude any kind of pet by type or category, provided that permitted household pets are not kept, bred or maintained for any commercial purpose; and provided further that any such permitted pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from any Lot upon three (3) days' written notice from the Declarant. Pets must be housed indoors.

d. SIGNS: No sign or any character shall be erected, placed, permitted, maintained or displayed upon any Lot except "For Rent" or "For Sale" signs, referring only to the Lot on which displayed, not to exceed six (6) square feet in size, and one sign to a Lot.

e. COMMERCIAL VEHICLES: No motor homes, commercial vehicles, construction, or like equipment or mobile or stationary trailers of any kind shall be stored or parked on any Lot in the Real Estate or on the Open Spaces

except while parked in a garage completely enclosed, or parked on any residential street in the Real Estate except while engaged in transporting to or from a residence in the Real Estate.

f. NUISANCES: No horses, cattle, swine, goats, poultry, or fowl shall be kept on any Lot. No clotheslines or drying yards shall be permitted unless concealed by hedges, lattice work, or screening acceptable to the Declarant. No weeds, underbrush, or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding Lots. In the event that any Lot Owner shall fail or refuse to keep his Lot free from weeds, underbrush, or refuse piles or other unsightly growths or objects, then the Declarant may enter upon such lands and remove the same at the expense of the Lot Owner, which such entry shall not be deemed a trespass, and in the event of such a removal a lien shall arise and be created in favor of the Declarant and against such Lot for the full amount chargeable to such Lot, and such amount shall be due and payable within Thirty (30) days after demand is made therefor.

g. OBSTRUCTION OF EASEMENTS: No Lot Owner shall do any work or any other act which would impair any easement or hereditament without the consent of the Declarant or Association, whichever may be affected thereby.

h. CONSTRUCTION RESTRICTIONS:

i. Home styles preferred are Cape Cod, Colonial, Country, Victorian and Traditional. Any deviations shall be only with approval of the Architectural Review Committee, judgment of the Committee is final.



ii. Roof pitch 8:12 minimum where practical with architectural shingles.

iii. All porches shall be stained to coordinate with house. No unfinished wood shall be exposed to exterior.

iv. Brick or lattice shirting shall be required around house foundation, porches, decks and out buildings.

v. Clearing of large trees shall be done only to install improvements and no clear cutting of Lot is permitted.

vi. Detached garages and storage buildings are permitted only if design is in conformity with the house and is approved by the Architectural Review Committee.

vii. Pools to be in ground with no more than 2.0' above ground.

viii. All exterior walls are to be brick, vinyl siding or wood if stained with solid color stain.

Section 4.2. USE OF OPEN SPACES: The use of Open Spaces shall be subject to the following restrictions:

a. OBSTRUCTION OF OPEN SPACES: There shall be no obstruction of the Open Spaces nor shall anything be stored in the Open Spaces without the prior consent of the Board of Directors except as herein expressly provided. Without limiting the generality of the foregoing, no clothes, sheets, blankets, laundry or other articles of any kind shall be hung out or exposed on any part of the Open Spaces. The Open Spaces shall be kept free and clear of rubbish, debris and other unsightly materials. No benches, chairs or other personal property shall be left on, nor shall any playing, lounging, parking of baby carriages, playpens, bicycles, wagons, toys or vehicles be permitted on, any part of the Open Spaces without the prior consent of, and subject to any regulations of the Board of Directors.



b. ENCROACHMENTS ON OPEN SPACES: No Lot Owner shall make any installation which extends beyond the physical limits of the Lot Owner's Lot into the Open Spaces.

c. NUISANCES: No noxious or offensive activity shall be carried on in any Lot or in the Open Spaces, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Lot Owners or occupants, or which interferes with the peaceful possession or proper use of any of the Lots or of the Open Spaces.

d. INSURANCE RISK; COMPLIANCE WITH LAW; WASTE: Nothing shall be done or kept in the Open Spaces which will increase the rate of insurance thereon, or contents thereof, without the prior written consent of the Association. No Lot Owner shall permit anything to be done or kept in his Lot or in the Open Spaces which will violate any law, statute, ordinance or regulation or any governmental body or which will result in the cancellation of any insurance maintained by the Association. No waste shall be committed in the Open Spaces.

e. RULES AND REGULATIONS: Reasonable Rules and Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Open Spaces, may be promulgated from time to time by the Association, subject to the right of the Association to change such Rules and Regulations. Copies of the then current Rules and Regulations and any amendments thereto shall be furnished to all Lot Owners by the Association promptly after the adoption of such Rules and Regulations or any amendments thereto.

Section 4.3. CONSTRUCTION AND OCCUPANCY: When the construction of any Building is once begun, work thereon must be prosecuted diligently and must be completed within one (1) year, and no debris incidental to construction work on one Lot may be placed on any other Lot in such premises. Upon the purchase and closing of a Lot, construction must start with twelve (12) months.

a. OUTBUILDINGS: No outbuilding, garage, shed, tent, trailer, or temporary Building of any kind shall be erected, constructed, permitted, or maintained prior to commencement of the erection of a residence, as is

permitted hereby, and no outbuilding, garage, shed, tent, trailer, basement, or temporary Building shall be used for permanent or temporary residence purposes; provided, however, that this paragraph shall not be deemed or construed to prevent the use of a temporary construction shed during the period of actual construction of any structure on any Lot in the Real Estate, nor the use of adequate sanitary toilet facilities for workmen which shall be provided during such construction.

b. OCCUPANCY OF BUILDINGS: No Building erected upon any Lot shall be occupied in any manner while in the course of construction, nor at anytime prior to its being fully completed, as herein required. Nor shall any Building, when completed, be in any manner occupied until made to comply with the approved plans, the requirements herein, and all other covenants, conditions, reservations, and restrictions herein set forth.

Section 4.4. MINING: Except for or in connection with any mining, mineral, gas drilling or oil drilling rights and/or similar operations given under prior instruments now binding upon the Real Estate, no derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Real Estate, nor shall any oil, natural gas, petroleum, asphaltum, or hydrocarbon products or minerals of any kind be produced or extracted therefrom.

## ARTICLE 5 ARCHITECTURAL CONTROL

Section 5.1. DECLARANT'S RIGHT TO CONTROL IMPROVEMENTS: For the purpose of further insuring the development of the premises as an area of high standards, the Declarant reserves the power to control the Buildings, structures, and other improvements placed on each Lot, as well as to make such exceptions to these covenants, conditions, reservations and restrictions as the Declarant shall deem necessary and proper.

a. Prior to the start of construction, all plans and specifications must be submitted to the Declarant for its approval, said approval not to be unreasonably withheld.

Section 5.2. MINIMUM STANDARDS: Notwithstanding the foregoing right to approve building plans, the following minimum standards shall apply to Buildings on the Lots in the Real Estate:

a. No one-story Buildings shall be constructed on Lots with a fully enclosed first floor area of less than 1,800 square feet, exclusive of carport, garage, decks, and open porches. No two-story or higher Buildings shall be constructed with a fully enclosed first floor area of less than 1,000 square feet, or a total square footage of two floors not less than 2,200 square feet. No one and one-half story Building shall be constructed with a fully enclosed first floor area of less than 1,000 square feet.

b. The exterior Building materials shall extend to grade level, and no building shall have an unfinished exposed foundation of concrete or concrete block.

c. All lawns must be either seeded or sodded for the entire front area, both sides and rear of the residence, said seeding or sodding to be done within six (6) months or next immediate growing season after erection of the residence on any Lot, whichever first occurs. One tree must be planted in front.

d. All driveways must be paved within six (6) months from occupancy of the Building with either asphalt, concrete or brick.

Section 5.3. SUBDIVISION OF LOTS: None of the Lots shall at any time be subdivided. A single Lot, together with contiguous portion or portions of one or more Lots, may be used for one building site, and no Building or structure or any part thereof shall be erected or maintained nearer the side boundary lines of such integral unit than Twenty (20') feet.

#### ARTICLE 6 SETBACKS AND BUILDING LINES

Section 6.1. BUILDING DEFINED: For the purpose of this Section, Building shall also mean the main residence, the garage, and related outbuildings and all projections thereof such as bay, bow, or oriel windows, exterior chimneys, covered porches, porticos, loggias, and the like, but shall not include the eaves of such structures, open pergolas, uncovered porches, open terraces, stoops, steps, or balustrades, the sides of which do not extend more than Three (3') feet above the level of the ground floor of the main Building.

Section 6.2. SETBACK AND BUILDING DISTANCES: No Building shall be erected nearer than Twenty-Five (25') feet to the street or Ten (10') feet to the Lot side line, except as may otherwise be shown on the Plats. Where one and one-half, two, or more Lots are acquired as a single building site, the side Lot lines shall refer only to the Lot lines boarding the adjoining property. Notwithstanding anything to the contrary herein, the Declarant shall have the right to permit reasonable modifications of the setback requirements where in its sole discretion strict enforcement of these setback provisions would work a hardship.

Section 6.3. WALLS AND FENCES: Walls and fences may be erected and hedges grown but only between the building line and the rear Lot line (except for split-rail corner fences located at the corners of a Lot side line and the street bounding the Lot, not exceeding 12-feet in each of the two legs), and shall be no higher than Four (4') feet.

a. Prior to the start of construction, all plans and specifications must be submitted to the Declarant for its approval, said approval not to be unreasonably withheld.

#### ARTICLE 7 HOMEOWNERS' ASSOCIATION

Section 7.1. MEMBERSHIP: For the purpose of ownership and maintenance of Open Spaces and all common community services of every kind and nature required or desired within the Real Estate for the general use and benefit of all Lot Owners, each and every Lot Owner, in accepting a deed or contract for any Lot in the Real Estate, agrees to and shall be a member of and be subject to the obligations and duly enacted by-laws of Heritage Point Homeowners' Association, a nonprofit corporation.

Section 7.2. SUCCESSION: Upon the sale by Declarant of all of the Lots provided in the Plats embracing all of the Real Estate, the Association shall succeed to the position of the Declarant with respect to the provisions of these covenants, conditions, reservations and restrictions, and the term "Declarant" herein shall then mean the "Association".

Section 7.3. POWERS OF THE ASSOCIATION: In addition to the powers set forth hereinabove, the Association shall have the following additional powers:

a. DELEGATION OF AUTHORITY: To appoint committees of the Board of Directors (which need consist of only one (1) member of the Board of Directors) and to delegate to such committees the Board of Directors' authority to carry out certain duties of the Board of Directors, subject to the approval and control of the Board of Directors.

b. CONTRACTING FOR SERVICES: To engage the services of any persons (including, but not limited to, accountants and attorneys) deemed necessary by the Association at such compensation as is deemed reasonable by the Board of Directors, in the operation, repair, maintenance and management of the Open Spaces, or in connection with any duty, responsibility or right of the Association and to remove, at any time, any such personnel.

#### ARTICLE 8

#### BUDGETS; COMMON EXPENSES; ASSESSMENTS AND ENFORCEMENT

Section 8.1. QUARTERLY ASSESSMENTS: All Common Expense assessments made in order to meet the requirements of the Association's annual budget shall be deemed to be adopted and assessed on a quarterly basis (rather than on an annual basis payable in quarterly installments) and shall be due and payable in advance on the first day of each quarter. Special assessments shall be due and payable in one or more quarterly payments, in advance, on the first day of each quarter, as determined by the Board of Directors.

Section 8.2. SUBORDINATION OF CERTAIN CHARGES: Any fees, charges, late charges, fines and interest which may be levied by the Association shall be subordinate to the lien of a prior recorded mortgage on a Lot.

Section 8.3. LIMITATION ON EXPENDITURES: All expenses, charges and costs of the maintenance, repair or replacement of the Open Spaces, and any other expenses, charges or costs which the Association may incur or expend pursuant hereto, shall be approved by the Board of Directors, and a written memorandum thereof prepared and signed by the Treasurer of the Association. There shall be no structural alterations, capital additions to, or capital improvements on, the Open Spaces (other than for purposes

of repairing, replacing and restoring portions of the Open Spaces) requiring an expenditure in excess of Ten Thousand and 00/100 (\$10,000.00) Dollars without the prior approval of the Lot Owners entitled to cast Two-Thirds (2/3) of the votes of all Lot Owners.

Section 8.4. RESERVE: Each annual budget for quarterly assessments of Common Expenses shall include an amount reasonably considered by the Board of Directors to be sufficient as a reserve for replacements and contingencies. To initiate such reserve, the Declarant shall collect from each of its grantees Three Hundred and 00/100 (\$300.00) Dollars per annum beginning January 1, 1993, and the same amount each year thereafter until changed by the Board of Directors. This fee shall be allocable to the Lot purchased by such grantee and shall remit such amount to the Association. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year may be charged first against such reserve, as the Board of Directors shall determine. In addition, the Association shall have the right to segregate all or any portion of the reserve for any specific replacement or contingency upon such conditions as the Board of Directors deems appropriate.

Section 8.5. ACCOUNTING: On or before 1st day of January of each calendar year commencing 1993, the Association shall supply to all Lot Owners an itemized accounting of the Common Expenses for the proceeding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the annual budget or quarterly assessments and leases and sales of property owned or managed by the Association on behalf of the Association, and showing the net excess or deficit of income over expenditures plus reserves.

Section 8.6. FURTHER ASSESSMENTS: If any annual budget proves inadequate for any reason, including nonpayment of any Lot Owner's quarterly assessments, or any nonrecurring Common Expense or any Common Expense not set forth in the annual budget as adopted, the Board of Directors may at any time levy further quarterly assessments according to each Lot Owner's membership in the Association. Such further quarterly assessments shall be payable over such period of time as the Board of Directors may determine. The Board of Directors shall serve notice of such further assessments on all Lot Owners by a statement in writing giving the amount and reasons therefor, and such further quarterly assessments shall become effective as determined by the Board of Directors.

Section 8.7. SURPLUS: Any amounts accumulated from assessments for Common Expenses and income from the operation of the Open Spaces to which such Common Expenses pertain in excess of the amount required for actual Common Expenses and reserves for future Common Expenses shall be credited to each Lot Owner paying a share of such Common Expenses in proportion to the share of such Common Expenses paid by each such Lot Owner, said credits to be applied to the next quarterly assessments of Common Expenses due from said Lot Owners under the current fiscal year's budget, and thereafter, until exhausted.

Section 8.8. ACCELERATION. If a Lot Owner is in default in the payment of the aforesaid charges or quarterly assessments for sixty (60) days, the Board of Directors may, in addition to all other remedies in this Declaration contained, accelerate all other quarterly assessments to become due for the fiscal year in which such default occurs.

Section 8.9. INTEREST AND CHARGES: All sums assessed by the Association against any Lot Owner as a regular or special assessment shall bear interest thereon at the then maximum legal rate (but not more than fifteen (15%) percent per annum) from the thirtieth (30th) day following default in payment of any quarterly assessment when due. Any delinquent Owner shall also be obligated to pay (i) all expenses of the Association, including reasonable attorney's fees, incurred in the collection of the delinquent assessments by legal proceedings or otherwise; (ii) any amounts paid by the Association for taxes or on account of superior liens or otherwise to protect its liens, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessments and shall be collectible as such, subject to Section 8.2 above.

Section 8.10. CONFESSION OF JUDGMENT: IN ORDER TO EXPEDITE THE ASSOCIATION'S COLLECTION OF ANY DELINQUENT ASSESSMENT, EACH LOT OWNER (BY THE ACCEPTANCE OF THE DEED TO HIS LOT) SHALL BE DEEMED TO HAVE APPOINTED ANY ONE OR MORE MEMBERS OF THE BOARD OF DIRECTORS THE ATTORNEY-IN-FACT FOR SUCH LOT OWNER TO CONFESS JUDGMENT AGAINST SUCH LOT OWNER IN ANY COURT OF COMPETENT JURISDICTION IN NORTH CAROLINA, FOR ANY SUCH UNPAID ASSESSMENT(S), WHICH APPOINTMENT (BEING FOR SECURITY) SHALL BE IRREVOCABLE; AND FOR SO DOING A COPY OF THIS ARTICLE 12 AND SAID DEED, BOTH VERIFIED BY AFFIDAVIT, SHALL BE A SUFFICIENT WARRANT. THE AUTHORITY GRANTED HEREIN TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY EXERCISE THEREOF BUT SHALL CONTINUE FROM TIME TO TIME AND AT ALL TIMES UNTIL THE DECLARATION SHALL BE TERMINATED.



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Section 8.11. IMPLEMENTATION: The Association shall adopt in its By-Laws such additional or other procedures and requirements as it deems necessary and desirable to implement the provisions of this Article 8, and to otherwise provide for the efficient fiscal operation and management of the Open Spaces.

**ARTICLE 9**  
**INSURANCE**

Section 9.1. GENERALLY: The Association shall acquire and pay for insurance subject to the following:

a. Such insurance as the Board of Directors deems advisable in the operation, and for the protection, of the Open Spaces.

b. The amount of property insurance obtained pursuant to the Act shall be equal to the full insurable replacement value of the insured property, without deduction for depreciation. Such insurance policy(ies) may, at the option of the Board of Directors, contain a "deductible" provision in an amount determined by the Board of Directors but not to exceed Five Thousand and 00/100 (\$5,000.00) Dollars.

c. Each Lot Owner and the Association hereby waives and releases any and all claims which he or it may have against any other Lot Owner, the Association, the Board of Directors and members thereof, the Declarant and their respective employees and agents, for damage to the Open Spaces, or to any personal property located in the Open Spaces, caused by fire or other casualty or any act or omission of any such party to the extent that such damages is covered by fire or other form of hazard insurance.

d. If the act or omission of a Lot Owner, or of a member of his family, a household pet, guest, occupant or visitor of such Lot Owner, shall cause damage to the Open Spaces, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Lot Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board of Directors, to the extent such payment is not waived or released under the provisions of subsection (c) above.

e. Any release or waiver referred to in subsection (c) and (d) hereof shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover thereunder. The Lot Owners and the Association, with regard to the insurance carried by each of them, shall use their best efforts to see that their insurance carriers agree that such release or waiver does not affect their rights to recover.

f. If the Association fails within sixty (60) days of an insured loss to initiate a claim for damages recoverable under the property insurance policy(ies) obtained by the Association, any Lot Owner may initiate such a claim on behalf of the Association. At least once every three (3) years, but more frequently if in the Board of Directors' judgment the Open Spaces are rapidly appreciating in value, the Board of Directors shall cause an appraisal of the Open Spaces to be made for the purpose of determining the current full insurable replacement value of the insured property, without considering depreciation, and the Board of Directors shall change the amount of property insurance on the Open Spaces to the amount of the then current full insurable replacement value of the Open Spaces as established by such appraisal.

g. Comprehensive public liability and property damage insurance shall be in such limits as the Board of Directors shall deem desirable provided that such limit shall not be less than One Million and 00/100 (\$1,000,000.00) Dollars per occurrence, for personal injury and/or property damage, insuring the Declarant, the Association, the members of the Board of Directors, and their respective agents and employees, and the Lot Owners, from any liability to the public or to the Lot Owners, their tenants or invitees, relating in any way to the ownership and/or use of the Open Spaces or any part thereof.

h. The Association may obtain such other forms of insurance as the Board of Directors shall elect to effect including Board of Directors and officers liability insurance and such Worker's Compensation insurance as may be necessary to comply with applicable laws.

i. The Association shall obtain a fidelity bond or bonds or insurance to protect against dishonest acts on the part of the members of the Board of Directors, officers, agents, employees, volunteers and all others who handle, or are responsible for handling, funds of the Association. Such bond or bonds or insurance shall name the Association as an obligee or insured and shall be in an amount equal to One Hundred Fifty (150%) percent of the then current Common Expense budget or such higher amount as the Board of Directors deems appropriate. Such bond or bonds or insurance shall contain a waiver of defense based upon the exclusion or persons who serve without compensation from the definition of "employee" or other appropriate provisions to assure coverage of such persons.

j. Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Association, fees and expenses of the insurance trustee, if any, and the cost of any appraisal which the Board of Directors deems advisable in connection with any insurance, shall be Common Expenses.

k. The Association shall use its best efforts to secure policies providing that the policies cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Lot Owners or any officer or employee of the Association without a prior demand in writing that the Association cure the defect and without a reasonable period of time thereafter in which to cure the same.

#### ARTICLE 10

##### LIMITED LIABILITY AND INDEMNIFICATION

Section 10.1. LIMITED LIABILITY OF THE BOARD OF DIRECTORS:  
The Board of Directors, and its members in their capacity as members, officers and employees:

a. Shall not be liable for the failure of any service to be obtained by the Association and paid for by the Association, or for injury or damage to Persons or

property caused by the elements or by another Lot Owner or person on the Real Estate, unless each such instance, such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Board of Directors;

b. Shall not be liable to the Lot Owners as a result of the performance of the members of the Board of Directors' duties for any mistake of judgment, negligence or otherwise, except for the members of the Board of Directors' own willful misconduct or gross negligence;

c. Shall have no personal liability in contract to a Lot Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Board of Directors or the Association in the performance of the duties of the members of the Board of Directors;

d. Shall not be liable to a Lot Owner, or such Lot Owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such Lot Owner or his tenants, employees, agents, customers or guests in a Lot, or in or on the Open Spaces, except for the members of the Board of Directors' own willful misconduct or gross negligence;

e. Shall have no personal liability in tort to a Lot Owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for the members of the Board of Directors own willful misconduct or gross negligence in the performance of their duties; and

f. Shall have no personal liability arising out of the use, misuse or condition of any Building or the Open Spaces, or which might in any other way be assessed against or imputed to the members of the Board of Directors as a result of or by virtue of their performance of their duties, except for the members of the Board of Directors own willful misconduct or gross negligence.

Section 10.2. NOTICE OF COMPLAINTS: Complaints brought against the Association, the Board of Directors or the officers, employees or agents thereof in their respective capacities as such, shall be directed to the Board of Directors of the Association, which shall promptly give written notice thereof to the Lot Owners and such complaints shall be defended by the Association. The Lot Owners and the holders of mortgages on Lots shall have no rights to participate in such defense other than through the Association.

Section 10.3. INDEMNIFICATION AGAINST THIRD PARTY ACTIONS: The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Board of Directors or Association) by reason of the fact that he is or was a member of the Board of Directors, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by an adverse judgment, order, or settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 10.4. INDEMNIFICATION AGAINST ASSOCIATION ACTION: The Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, by or in the right of the Board of Directors or the Association, by reason of the fact that he is or was a member of the Board of Directors, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees),

judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 10.5. DETERMINATION: To the extent that a member of the Board of Directors, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 10.3 or 10.4 hereof, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Section 10.3 or 10.4 hereof shall be made by the Association only upon a determination that indemnification of the Board of Directors member, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Sections 10.3 or 10.4 hereof. Such determination shall be made either (i) by the Board of Directors by a majority vote of a quorum consisting of all members who were not parties to such action, suit or proceeding, or (ii) by independent legal counsel in a written opinion, or (iii) by the Lot Owners by the affirmative vote of a majority of the Lot Owners at any meeting duly called for such purpose.

Section 10.6. ADVANCES: Expenses incurred in defending a civil or criminal action, suit or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon a majority vote of the Board of Directors and upon receipt of an undertaking by or on behalf of the Board of Directors member, officer, employee, or agent to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article.

Section 10.7. SCOPE OF INDEMNIFICATION: The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, By-Laws, agreements, vote of disinterested Lot Owners or members of the Board of Directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this Article shall apply to all present and future members of the Board of Directors, officers, employees, and agents of the Association, and shall continue as to a person who has ceased to be a member of the Board of Directors or an officer, employee or agent, shall inure to the benefit of the heirs and personal representatives of all such Persons and shall be in addition to all other rights which such Persons may be entitled as a matter of law.

Section 10.8. INSURANCE: The Association may purchase and maintain insurance on behalf of any person who was or is a member of the Board of Directors, officer, employee, or agent of the Association, or who was or is serving at the request of the Association as a trustee, director, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit), against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of North Carolina, as the same may be hereafter amended or modified.

Section 10.9. PAYMENTS AND PREMIUMS: All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute expenses of the Association and shall be Common Expenses.

#### ARTICLE 11 EFFECT AND ENFORCEMENT

Section 11.1. RESERVATIONS AND RESTRICTIONS TO RUN WITH LAND: All of the covenants, conditions, restrictions, reservations, and servitudes set forth herein shall run with the land and each Lot Owner, by accepting a deed to any Lot, accepts the same subject to such covenants, restrictions, reservations, and servitudes and agrees for himself, his heirs, administrators, and assigns to be bound by each of such covenants, conditions, restrictions, reservations, and servitudes jointly, separately, and severally.



Section 11.2. REMEDIES FOR VIOLATIONS: For a violation or a breach of any of these covenants, conditions, reservations and restrictions by any person claiming by, through, or under the Declarant, or by virtue of any judicial proceedings, the Declarant, and the Lot Owners, or any of them severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing right, the Declarant shall have the right, whenever there shall have been built on any Lot any structure which is in violation of these restrictions, to enter upon the Lot where such violation of these covenants, conditions, reservations and restrictions exists and summarily abate or remove the same at the expense of the owner, and any such entry and abatement or removal shall not be deemed a trespass.

a. Should the Declarant or any Lot Owner employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions, or reentry, by reason of such breach, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the Lot Owner and the reversionary owner shall have a lien upon such Lot or Lots to secure payment of all such accounts.

b. Should the owner fail, neglect, or refuse to satisfy and discharge any lien arising hereunder within thirty (30) days, the Declarant or Lot Owner in whose favor said lien has arisen, their respective heirs, successors and assigns, shall have the right to interest on such liens at the rate of eight (8%) percent per annum and shall be entitled to receive all costs of collection, including a reasonable attorney's fee.

c. The breach of any of the foregoing covenants, conditions, reservations or restrictions, shall not defeat or render invalid the lien on any mortgage made in good faith for value as to any Lot of Lots or portions of Lots, but these covenants, conditions, reservations, and restrictions shall be binding upon and effective against any such mortgagee or owner thereof, whose title thereto or whose grantor's title is or was acquired by foreclosure, or otherwise.

d. No delay or omission on the part of the Declarant or the Lot Owners in the Real Estate in exercising any rights, power, or remedy herein provided, in the event of any breach of the covenants, conditions, reservations, or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Declarant for or on account of its failure to bring any action on account of any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions herein which may be unenforceable by the Declarant.

Section 11.3. SEVERABILITY: Each and every of the covenants, restrictions, reservations, and servitudes contained herein shall be considered to be an independent and separate covenant and agreement and in the event any one or more of the foregoing covenants, conditions, reservations, or restrictions shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions, reservations, and restrictions not so declared to be void, but all of the remaining covenants, conditions, reservations, and restrictions not so expressly held to be void shall continue unimpaired and in full force and effect.

Section 11.4. RULE AGAINST PERPETUITIES: In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such terms shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of North Carolina.

Section 11.5. PUBLIC RIGHTS: The Real Estate shall be subject to any and all rights and privileges which the Township of Nags Head, County of Dare or the State of North Carolina, may have acquired through dedication or the filing or recording of maps or plats of such premises, as authorized by law, and provided further, that no covenants, conditions, reservations, or restrictions, or acts performed shall be in conflict with any Township or County Zoning Ordinance or Law.

ARTICLE 12  
DURATION OF COVENANTS, RESTRICTIONS,  
RESERVATIONS AND SERVITUDES

Section 12.1. DURATION: All of the foregoing covenants, conditions, reservations, and restrictions shall continue and remain in full force and effect at all times as against the owner of any lot in such premises, regardless of how he acquired title, until the commencement of the calendar year 2010, on which date these covenants, conditions, reservations, and restrictions shall terminate and end, and thereafter be of no further legal or equitable effect on the Real Estate or any Lot Owner; provided, however, that these covenants, conditions, reservations, and restrictions shall be automatically extended for a period of ten (10) years, and thereafter in successive ten-year periods, unless on or before the end of one of such extension periods or the base period the Lot Owners of a majority of the Lots in the Real Estate shall be written instrument duly recorded declare a termination of the same. Although these covenants, conditions, reservations, and restrictions may expire as herein provided, any and all reversions for breach of these covenants, conditions, reservations, or restrictions committed or suffered prior to such expiration shall be absolute.

ARTICLE 13  
DECLARANT'S RIGHTS

Section 13.1. CONTROL:

a. Until the Sixtieth (60th) day after conveyance of fifty (50) Lots to Lot Owners other than Declarant, Declarant shall have the right to appoint and remove any and all officers and members of the Board of Directors. Declarant may not unilaterally remove any members of the Board of Directors elected by Lot Owners other than Declarant.

b. No later than the earlier of (i) seven (7) years after the date of the recording of this Declaration, or (ii) One Hundred Eighty (180) days after ninety (90%) percent of the Lots which may be constructed on the Property and the Additional Real Estate have been conveyed to Lot Owners other than the Declarant, all Declarant-appointed members of the Board of Directors shall resign, and the Lot Owners (including Declarant to the extent of Lots owned by Declarant) shall elect a new

five (5) member Board of Directors, and the By-Laws of the Association shall be amended to increase the number of members of the Board of Directors from three (3) to five (5).

ARTICLE 14  
AMENDMENT OF DECLARATION

Section 14.1. AMENDMENT GENERALLY: This Declaration may be amended only in accordance with the express provisions of this Declaration.

Section 14.2. AMENDMENT BY LOT OWNERS: This Declaration may be amended by affirmative vote of Two-Thirds (2/3) of all Lot Owners (including Lots owned by Declarant), pursuant to procedures applicable to voting by members of the Association as set forth in its By-Laws.

Section 14.3. RIGHTS OF DECLARANT: Notwithstanding any provision herein contained to the contrary, no change, modification or amendment which affects the rights, privileges or obligations of the Declarant shall be effective without the prior written consent of the Declarant.

Section 14.4. OTHER AMENDMENTS: If any amendment is necessary in the judgment of the Declarant to cure any ambiguity or to correct or supplement any provision of this Declaration or the Plats which is defective or inconsistent with any other provision hereof or thereof, or to change, correct or supplement anything appearing or failing to appear in the Plats which is incorrect, defective or similarly inconsistent, the Declarant may, at any time and from time to time effect such amendment without the approval of the Lot Owners or their Mortgagees. Each such amendment shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, execution and acknowledgment by one or more officers of the Declarant.

EX 793 PG 0090

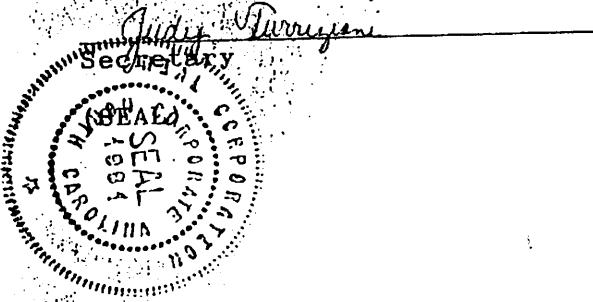
IN WITNESS WHEREOF, the said Heritage Point Associates has caused its name to be signed to these presents by the officers of its partner on the day and year first above written.

ATTEST:

RIAL CORPORATION

BY:

President



BK 816 PG 0258

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FILED

Prepared by and Return to:  
William C. Stillwagon, P.C.  
319 South Maple Avenue  
Greensburg, PA 15601

'92 AUG 7 PM 4 31

DORRIS A. FRY  
REGISTER OF DEEDS  
DARE COUNTY, N.C.

AMENDED DECLARATION OF CONDITIONS, RESERVATIONS AND RESTRICTIONS

HERITAGE POINT  
Township of Nags Head  
County of Dare  
State of North Carolina

THIS AMENDED DECLARATION is made this 31st day of July, 1992.

WHEREAS, on March 17, 1992, RIAL CORPORATION, a North Carolina Corporation, owner in fee simple of real estate located in Nags Head Township, Dare County, North Carolina filed a Declaration and Establishment of Conditions, Reservations and Restrictions for the Heritage Point Plan of Lots, which is recorded in the Registry of Deeds in Dare County, North Carolina in Deed Book Volume 793, Page 64.

WHEREAS, the RIAL CORPORATION referred to as the Declarant desires to amend the restrictions and restrictive covenants, prior to sale of any lots, as follows:

ARTICLE I  
SUBMISSION

Section 1.1. DECLARANT; PROPERTY; COUNTY: RIAL CORPORATION, a North Carolina Corporation (the "Declarant"), owner in fee simple of the Real Estate described in Exhibit "A" attached hereto, located in Roanoke Island, Nags Head Township, Dare County, North Carolina, hereby submits the Real Estate to the following conditions, reservations and restrictions.

Section 1.2. PHASED PLAN OF DEVELOPMENT: Declarant proposes to develop the Real Estate in three (3) or more phases. This Declaration shall become effective as to that portion of the Real Estate embraced by each phase of development as the Plat with respect thereto is recorded in the Office of the Recorder of Deeds in and for Dare County, North Carolina.

Section 1.3. ADDITIONAL PLAN OF DEVELOPMENT: Declarant reserves the right to place additional reservations and restrictions on each subsequent phase of development, more particularly those phases which abut bodies of water.

ARTICLE II  
DEFINED TERMS

Section 2.1. TERMS DEFINED: All capitalized terms used herein shall have ascribed to them the following meanings, otherwise defined herein.

- a. "Association" means the Heritage Point Association.
- b. "Board of Directors" means the Board of Directors of the Association.
- c. "Building(s)" means any building(s) constructed or erected on the Real Estate.
- d. "Declarant" means the Declarant described in Section 1.1 above and all successors to any of Declarant's rights.
- e. "Declaration" means this document, as the same may be amended from time to time.
- f. "Open Space(s)" means the Open Space(s) as shown on the Plat(s), and all buildings and structures erected thereon and improvements thereto. Open Space(s) shall also include the boat dock, boat basin and roads.
- g. "Plat(s)" means the plat(s) recorded, or to be recorded, subdividing the Real Estate and made a part hereof, as the same may be amended from time to time.
- h. "Real Estate" means the real estate described in Exhibit "A".
- i. "Lot" means a lot as described in the Plats.
- j. "Lot Owner" means the owner in fee simple of any Lot, but shall not include the Declarant or any person or persons purchasing a Lot under contract (until such contract is fully performed and legal title conveyed of record).
- k. "Common Expenses" means the expense of owning and maintaining the Open Spaces (including boat dock, boat basin, and roads), drainage and storm water detention facilities within or appurtenant to the Real Estate, and



of providing all common community services required or desired for the general use and benefit of all Lot Owners.

**ARTICLE 3**  
**EASEMENTS**

Section 3.1. **EASEMENTS**: Declarant hereby creates the following easements:

a. **EASEMENT FOR SALES OFFICES, MANAGEMENT OFFICES AND MODELS**: Declarant shall have the right to maintain sales offices, management offices and models on the Real Estate and to relocate such models, management offices and sales offices from time to time anywhere within the Real Estate. Declarant reserves the right to place models, management offices and sales offices on any portion of the Open Spaces (including boat dock, boat basin, and roads) in such manner, of such size and in such locations as Declarant deems appropriate. Declarant may from time to time relocate models, management offices and sales offices to different locations within the Real Estate. Upon the relocation of a model, management office or sales office on the Open Spaces (including boat dock, boat basin, and roads), Declarant may remove all personal property and fixtures therefrom. Any fixtures not so removed shall be deemed part of the Open Spaces (including boat dock, boat basin, and roads), and any personal property not so removed shall be deemed the property of the Association.

b. **EASEMENT FOR ADVERTISING SIGNS**: Declarant shall have the right to maintain on the Real Estate such advertising signs as Declarant in its sole discretion may deem appropriate, provided that such signs comply with applicable governmental requirements. Declarant may from time to time relocate such advertising signs.

Section 3.2. **UTILITY EASEMENTS**: The Real Estate shall be, and is hereby made subject to easements in favor of the Declarant, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Real Estate. The easements created in this Section 3.2 shall include, without limitation, rights of Declarant, or the providing utility

or service company, or governmental agency or authority, to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electric wires, conduits and equipment and ducts and vents over, under, through, along and on the Lots, street rights-of-way and Open Spaces (including boat dock, boat basin, and roads). Notwithstanding the foregoing provision of this Section 3.2, unless approved in writing by the Lot Owner or Lot Owners affected thereby, any such easement through a Lot shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Lot by the Declarant, or as shown on the Plats, or so as not to materially interfere with the use or occupancy of the Lot or any Building by its occupants.

Section 3.3. EASEMENT FOR ACCESS TO REAL ESTATE: Declarant reserves a non-exclusive perpetual right of access and easement on, over and under those portions of the Open Spaces (including boat dock, boat basin, and roads) for the purpose of pedestrian and vehicular ingress, egress and regress to all or any part of the Real Estate, including the right to modify the location of improvements to the Open Spaces (including boat dock, boat basin, and roads) to facilitate such ingress, egress and regress, including without limitation the removal of obstructions to the exercise of such rights of ingress, egress and regress, and the grading or re-grading of landscaped areas of the Open Spaces (including boat dock, boat basin, and roads).

Section 3.4. DECLARANT'S EASEMENT TO CORRECT DRAINAGE: Declarant reserves an easement on, over and under those portions of the Open Spaces (including boat dock, boat basin, and roads) for the purpose of maintaining and correcting drainage of surface water in order to maintain reasonable standard of health, safety and appearance. The easement created by this Section 3.4 expressly includes the right to cut any trees, bushes or shrubbery, to grade the soil, or to take any other action reasonably necessary to achieve this purpose, following which the Declarant shall restore the affected property as closely to its original condition as practicable.

Section 3.5. DECLARANT'S EASEMENT FOR DEVELOPMENT OF REAL ESTATE: Declarant reserves an easement on, over and under those portions of the Open Spaces (including boat dock, boat basin, and roads) for all purposes relating to the construction, development, leasing, and sale of improvements on the Real Estate. This

easement shall include without limitation, the right of vehicular and pedestrian ingress and egress, the right to park motor vehicles and to engage in construction and marketing activities of any nature whatsoever, including the movement and storage of building materials and equipment, the conduct of sales, leasing and management activities, the maintenance of models and offices and the erection and maintenance of directional and promotional signs.

Section 3.6. TERMINATION OF EASEMENTS: The easements created by Sections 3.1 and 3.5 hereof shall terminate upon the conveyance by Declarant of all of the Lots on the Plats embracing all of the Real Estate.

Section 3.7. EASEMENT FOR USE OF COMMON SPACES:

a. GRANT OF EASEMENT: Each Lot Owner and each person lawfully residing on the Real Estate is hereby granted a non-exclusive perpetual right and easement of access to and enjoyment in common with others of the Open Spaces (including boat dock, boat basin, and roads).

b. EXTENT OF EASEMENT: The rights and easements of access and enjoyment created hereby shall be subject to the right of the Association to adopt rules and regulations governing the use of the Open Spaces (including boat dock, boat basin, and roads).

c. DOCK/BOAT BASIN EASEMENT: Each Lot Owner shall have a right to obtain one (1) boat slip from the Association. This right cannot be assigned, transferred or conveyed. This right is limited only to Lot Owners in Heritage Point and to no others.

#### ARTICLE 4 USE RESTRICTIONS

Section 4.1. USE AND OCCUPANCY OF LOTS & BUILDINGS: The occupancy and use of Lots and Buildings shall be subject to the following restrictions:

a. RESIDENTIAL USE: No part of the Real Estate shall be used for other than housing and the related common purposes for which the planned residential development was designed. Each Lot or any two or more adjoining Lots used together shall be used as a residence for a single

family or such other uses permitted by this Declaration and for no other purposes. If zoning regulations permit professional activities to be conducted within the Lots, application may be made by a Lot Owner to the Declarant for approval to commence such newly permitted use of his Lot. Each such application shall be considered by the Declarant on an individual basis. Once the Declarant has given its approval to a particular use of a Lot, it may not revoke such approval so long as the nature and scope of the approved use remains unchanged. No Building or structure intended for or adapted to business purposes, and no apartment house, double house, lodging house, rooming house, hospital, sanatorium or doctor's office, or other multiple-family dwelling shall be erected, placed, permitted, or maintained on such premises, or on any part thereof. No improvement or structure whatever, other than a first class private dwelling house, patio walls, underground swimming pool, and customary outbuilding, garage, servants' quarters, or guest house may be erected, placed, or maintained on any Lot in the Real Estate. No Lot Owner shall permit his Lot to be used or occupied for any prohibited purpose.

b. COMMERCIAL ACTIVITIES: Except as set forth in subsection (a) above, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Real Estate; provided, however, that nothing contained in this subsection shall be construed to prevent or prohibit a Lot Owner from maintaining his personal professional library, keeping his personal business or professional records or accounts, handling his personal business or professional telephone calls or conferring with business or professional associates, clients or customers, in his Lot.

c. PETS: No animals, livestock, fowl or poultry of any kind shall be raised, bred, or kept on any Lot or in the Open Spaces (including boat dock, boat basin, and roads), except household pets not to exceed three (3) for the please and use of the occupants, subject to Rules and Regulations adopted by the Declarant, which Rules and Regulations may exclude any kind of pet by type or category, provided that permitted household pets are not

kept, bred or maintained for any commercial purpose; and provided further that any such permitted pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from any Lot upon three (3) days' written notice from the Declarant. Pets must be confined to the Lot either by fence or restraint and not permitted to roam free from the Lot. Any pets that do leave the Lot must be on a leash or restraint.

d. SIGNS: No sign or any character shall be erected, placed, permitted, maintained or displayed upon any Lot.

e. COMMERCIAL VEHICLES: No motor homes, commercial vehicles, construction, or like equipment or mobile or stationary trailers of any kind shall be stored or parked on any Lot in the Real Estate or the Open Spaces (including boat dock, boat basin, and roads) except while parked in a garage completely enclosed. Boat trailers and motor homes shall be permitted on the Lot owners Lot, but must be parked to the rear of the house and Lot or in a garage completely enclosed.

f. NUISANCES: No horses, cattle, swine, goats, poultry, or fowl shall be kept on any Lot. No clotheslines or drying yards shall be permitted unless concealed by hedges, lattice work, or screening acceptable to the Declarant. No weeds, underbrush, or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding Lots. In the event that any Lot Owner shall fail or refuse to keep his Lot free from weeds, underbrush, or refuse piles or other unsightly growths or objects, then the Declarant may enter upon such lands and remove the same at the expense of the Lot Owner, which such entry shall not be deemed a trespass, and in the event of such a removal a lien shall arise and be created in favor of

the Declarant and against such Lot for the full amount chargeable to such Lot, and such amount shall be due and payable within Thirty (30) days after demand is made therefor.

g. OBSTRUCTION OF EASEMENTS: No Lot Owner shall do any work or any other act which would impair any easement or hereditament without the consent of the Declarant or Association, whichever may be affected thereby.

h. CONSTRUCTION RESTRICTIONS:

i. Home styles preferred are Cape Cod, Colonial, Country, Victorian and Traditional. Any deviations shall be only with approval of the Architectural Review Committee, judgment of the Committee is final.

ii. Roof pitch 8:12 minimum where practical with architectural shingles.

iii. All porches shall be stained to coordinate with house. No unfinished wood shall be exposed to exterior.

iv. Brick or lattice shirting shall be required around house foundation, porches, decks and out buildings.

v. Clearing of large trees shall be done only to install improvements and no clear cutting of Lot is permitted.

vi. Detached garages and storage buildings are permitted only if design is in conformity with the house and is approved by the Architectural Review Committee.

vii. Pools to be in ground with no more than 2.0' above ground.

viii. All exterior walls are to be brick, vinyl siding or wood if stained with solid color stain.

Section 4.2. USE OF OPEN SPACES (including boat dock, boat basin, and roads): The use of Open Spaces (including boat dock, boat basin, and roads) shall be subject to the following restrictions:

a. OBSTRUCTION OF OPEN SPACES (including boat dock, boat basin, and roads): There shall be no obstruction of the Open Spaces (including boat dock, boat basin, and roads) nor shall anything be stored in the Open Spaces (including boat dock, boat basin, and roads) without the prior consent of the Board of Directors except as herein expressly provided. Without limiting the generality of the foregoing, no clothes, sheets, blankets, laundry or other articles of any kind shall be hung out or exposed on any part of the Open Spaces (including boat dock, boat basin, and roads). The Open Spaces (including boat dock, boat basin, and roads) shall be kept free and clear of rubbish, debris and other unsightly materials. No benches, chairs or other personal property shall be left on, nor shall any playing, lounging, parking of baby carriages, playpens, bicycles, wagons, toys or vehicles be permitted on, any part of the Open Spaces (including boat dock, boat basin, and roads) without the prior consent of, and subject to any regulations of the Board of Directors.

b. ENCROACHMENTS ON OPEN SPACES (including boat dock, boat basin and roads): No Lot Owner shall make any installation which extends beyond the physical limits of the Lot Owner's Lot into the Open Spaces (including boat dock, boat basin, and roads).

c. NUISANCES: No noxious or offensive activity shall be carried on in any Lot or in the Open Spaces (including boat dock, boat basin, and roads), nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Lot Owners or occupants, or which interferes with the peaceful possession or proper use of any of the Lots or of the Open Spaces (including boat dock, boat basin, and roads).



d. INSURANCE RISK; COMPLIANCE WITH LAW; WASTE: Nothing shall be done or kept in the Open Spaces (including boat dock, boat basin, and roads) which will increase the rate of insurance thereon, or contents thereof, without the prior written consent of the Association. No Lot Owner shall permit anything to be done or kept in his Lot or in the Open Spaces (including boat dock, boat basin, and roads) which will violate any law, statute, ordinance or regulation or any governmental body or which will result in the cancellation of any insurance maintained by the Association. No waste shall be committed in the Open Spaces (including boat dock, boat basin, and roads).

e. RULES AND REGULATIONS: Reasonable Rules and Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Open Spaces (including boat dock, boat basin, and roads), may be promulgated from time to time by the Association, subject to the right of the Association to change such Rules and Regulations. Copies of the then current Rules and Regulations and any amendments thereto shall be furnished to all Lot Owners by the Association promptly after the adoption of such Rules and Regulations or any amendments thereto.

Section 4.3. CONSTRUCTION AND OCCUPANCY: When the construction of any Building is once begun, work thereon must be prosecuted diligently and must be completed within one (1) year, and no debris incidental to construction work on one Lot may be placed on any other Lot in such premises.

a. OUTBUILDINGS: No outbuilding, garage, shed, tent, trailer, or temporary Building of any kind shall be erected, constructed, permitted, or maintained prior to commencement of the erection of a residence, as is permitted hereby, and no outbuilding, garage, shed, tent, trailer, basement, or temporary Building shall be used for permanent or temporary residence purposes; provided, however, that this paragraph shall not be deemed or construed to prevent the use of a temporary construction shed during the period of actual construction of any structure on any Lot in the Real Estate, nor the use of adequate sanitary toilet facilities for workmen which shall be provided during such construction.

b. OCCUPANCY OF BUILDINGS: No Building erected upon any Lot shall be occupied in any manner while in the course of construction, nor at anytime prior to its being fully completed, as herein required. Nor shall any Building, when completed, be in any manner occupied until made to comply with the approved plans, the requirements herein, and all other covenants, conditions, reservations, and restrictions herein set forth.

Section 4.4. MINING: Except for or in connection with any mining, mineral, gas drilling or oil drilling rights and/or similar operations given under prior instruments now binding upon the Real Estate, no derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Real Estate, nor shall any oil, natural gas, petroleum, asphaltum, or hydrocarbon products or minerals of any kind be produced or extracted therefrom.

## ARTICLE 5 ARCHITECTURAL CONTROL

Section 5.1. DECLARANT'S RIGHT TO CONTROL IMPROVEMENTS: For the purpose of further insuring the development of the premises as an area of high standards, the Declarant reserves the power to control the Buildings, structures, and other improvements placed on each Lot, as well as to make such exceptions to these covenants, conditions, reservations and restrictions as the Declarant shall deem necessary and proper.

a. Prior to the start of construction, all plans and specifications must be submitted to the Declarant for its approval, said approval not to be unreasonably withheld.

Section 5.2. MINIMUM STANDARDS: Notwithstanding the foregoing right to approve building plans, the following minimum standards shall apply to Buildings on the Lots in the Real Estate:

a. No one-story Buildings shall be constructed on Lots with a fully enclosed first floor area of less than 1,800 square feet, exclusive of carport, garage, decks, and open porches. No two-story or higher Buildings shall be constructed with a fully enclosed first floor area of less than 1,000 square feet, or a total square footage of two floors not less than 2,200 square feet. No one and

one-half story Building shall be constructed with a fully enclosed first floor area of less than 1,000 square feet.

b. The exterior Building materials shall extend to grade level, and no building shall have an unfinished exposed foundation of concrete or concrete block.

c. All lawns must be either seeded or sodded for the entire front area, both sides and rear of the residence, said seeding or sodding to be done within six (6) months or next immediate growing season after erection of the residence on any Lot, whichever first occurs. One tree must be planted in front.

d. All driveways must be paved within six (6) months from occupancy of the Building with either asphalt, concrete or brick.

e. Culvertts must be placed in the drainage ditches along the roadways in the Plan so as to provide drive access and not block or damage the drainage ditches.

Section 5.3. SUBDIVISION OF LOTS: None of the Lots shall at any time be subdivided. A single Lot, together with contiguous portion or portions of one or more Lots, may be used for one building site, and no Building or structure or any part thereof shall be erected or maintained nearer the side boundary lines of such integral unit than Twenty (20') feet.

#### ARTICLE 6 SETBACKS AND BUILDING LINES

Section 6.1. BUILDING DEFINED: For the purpose of this Section, Building shall also mean the main residence, the garage, and related outbuildings and all projections thereof such as bay, bow, or oriel windows, exterior chimneys, covered porches, porticos, loggias, and the like, but shall not include the eaves of such structures, open pergolas, uncovered porches, open terraces, stoops, steps, or balustrades, the sides of which do not extend more than Three (3') feet above the level of the ground floor of the main Building.

Section 6.2. SETBACK AND BUILDING DISTANCES: No Building shall be erected nearer than Twenty-Five (25') feet to the street or Ten (10') feet to the Lot side line, except as may otherwise be

shown on the Plats. Where one and one-half, two, or more Lots are acquired as a single building site, the side Lot lines shall refer only to the Lot lines boarding the adjoining property. Notwithstanding anything to the contrary herein, the Declarant shall have the right to permit reasonable modifications of the setback requirements where in its sole discretion strict enforcement of these setback provisions would work a hardship.

Section 6.3. WALLS AND FENCES: Walls and fences may be erected and hedges grown but only between the building line and the rear Lot line. Split-rail corner fences located at the corners of a Lot side line and the street bounding the Lot, shall not exceed twelve (12) feet between each of the two (2) legs, and shall be no higher than four (4) feet.

a. Prior to the start of construction, all plans and specifications must be submitted to the Declarant for its approval, said approval not to be unreasonably withheld.

#### ARTICLE 7 HOMEOWNERS' ASSOCIATION

Section 7.1. MEMBERSHIP: For the purpose of ownership and maintenance of Open Spaces (including boat dock, boat basin, and roads) and all common community services of every kind and nature required or desired within the Real Estate for the general use and benefit of all Lot Owners, each and every Lot Owner, in accepting a deed or contract for any Lot in the Real Estate, agrees to and shall be a member of and be subject to the obligations and duly enacted by-laws of Heritage Point Homeowners' Association, a nonprofit corporation.

Section 7.2. SUCCESSION: Upon the sale by Declarant of all of the Lots provided in the Plats embracing all of the Real Estate, the Association shall succeed to the position of the Declarant with respect to the provisions of these covenants, conditions, reservations and restrictions, and the term "Declarant" herein shall then mean the "Association".

Section 7.3. POWERS OF THE ASSOCIATION: In addition to the powers set forth hereinabove, the Association shall have the following additional powers:

a. DELEGATION OF AUTHORITY: To appoint committees of the Board of Directors (which need consist of only one

(1) member of the Board of Directors) and to delegate to such committees the Board of Directors' authority to carry out certain duties of the Board of Directors, subject to the approval and control of the Board of Directors.

b. CONTRACTING FOR SERVICES: To engage the services of any persons (including, but not limited to, accountants and attorneys) deemed necessary by the Association at such compensation as is deemed reasonable by the Board of Directors, in the operation, repair, maintenance and management of the Open Spaces (including boat dock, boat basin, and roads), or in connection with any duty, responsibility or right of the Association and to remove, at any time, any such personnel.

#### ARTICLE 8

##### BUDGETS; COMMON EXPENSES; ASSESSMENTS AND ENFORCEMENT

Section 8.1. QUARTERLY ASSESSMENTS: All Common Expense assessments made in order to meet the requirements of the Association's annual budget shall be deemed to be adopted and assessed on a quarterly basis (rather than on an annual basis payable in quarterly installments) and shall be due and payable in advance on the first day of each quarter. Special assessments shall be due and payable in one or more quarterly payments, in advance, on the first day of each quarter, as determined by the Board of Directors.

Section 8.2. SUBORDINATION OF CERTAIN CHARGES: Any fees, charges, late charges, fines and interest which may be levied by the Association shall be subordinate to the lien of a prior recorded mortgage on a Lot.

Section 8.3. LIMITATION ON EXPENDITURES: All expenses, charges and costs of the maintenance, repair or replacement of the Open Spaces (including boat dock, boat basin, and roads), roads, and any other expenses charges or costs which the Association may incur or expend pursuant hereto, shall be approved by the Board of Directors, and a written memorandum thereof prepared and signed by the Treasurer of the Association. There shall be no structural alterations, capital additions to, or capital improvements on, the Open Spaces (including boat dock, boat basin, and roads) (other than for purposes of repairing, replacing and restoring portions of the Open Spaces including boat dock, boat basin and roads) requiring an expenditure in excess of Ten Thousand Dollars

(\$10,000.00) without the prior approval of the Lot Owners entitled to cast two-thirds (2/3) of the votes of all Lot Owners.

Section 8.4. RESERVE: Each annual budget for quarterly assessments of Common Expenses shall include an amount reasonably considered by the Board of Directors to be sufficient as a reserve for replacements and contingencies. To initiate such reserve, the Declarant shall collect from each of its grantees Three Hundred and 00/100 (\$300.00) Dollars per annum beginning January 1, 1993, and the same amount each year thereafter until changed by the Board of Directors. This fee shall be allocable to the Lot purchased by such grantee and shall remit such amount to the Association. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year may be charged first against such reserve, as the Board of Directors shall determine. In addition, the Association shall have the right to segregate all or any portion of the reserve for any specific replacement or contingency upon such conditions as the Board of Directors deems appropriate.

Section 8.5. ACCOUNTING: On or before 1st day of January of each calendar year commencing 1993, the Association shall supply to all Lot Owners an itemized accounting of the Common Expenses for the proceeding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the annual budget or quarterly assessments and leases and sales of property owned or managed by the Association on behalf of the Association, and showing the net excess or deficit of income over expenditures plus reserves.

Section 8.6. FURTHER ASSESSMENTS: If any annual budget proves inadequate for any reason, including nonpayment of any Lot Owner's quarterly assessments, or any nonrecurring Common Expense or any Common Expense not set forth in the annual budget as adopted, the Board of Directors may at any time levy further quarterly assessments according to each Lot Owner's membership in the Association. Such further quarterly assessments shall be payable over such period of time as the Board of Directors may determine. The Board of Directors shall serve notice of such further assessments on all Lot Owners by a statement in writing giving the amount and reasons therefor, and such further quarterly assessments shall become effective as determined by the Board of Directors.

Section 8.7. SURPLUS: Any amounts accumulated from assessments for Common Expenses and income from the operation of

the Open Spaces (including boat dock, boat basin, and roads) to which such Common Expenses pertain in excess of the amount required for actual Common Expenses and reserves for future Common Expenses shall be credited to each Lot Owner paying a share of such Common Expenses in proportion to the share of such Common Expenses paid by each such Lot Owner, said credits to be applied to the next quarterly assessments of Common Expenses due from said Lot Owners under the current fiscal year's budget, and thereafter, until exhausted.

Section 8.8. ACCELERATION. If a Lot Owner is in default in the payment of the aforesaid charges or quarterly assessments for sixty (60) days, the Board of Directors may, in addition to all other remedies in this Declaration contained, accelerate all other quarterly assessments to become due for the fiscal year in which such default occurs.

Section 8.9. INTEREST AND CHARGES: All sums assessed by the Association against any Lot Owner as a regular or special assessment shall bear interest thereon at the then maximum legal rate (but not more than fifteen (15%) percent per annum) from the thirtieth (30th) day following default in payment of any quarterly assessment when due. Any delinquent Owner shall also be obligated to pay (i) all expenses of the Association, including reasonable attorney's fees, incurred in the collection of the delinquent assessments by legal proceedings or otherwise; (ii) any amounts paid by the Association for taxes or on account of superior liens or otherwise to protect its liens, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessments and shall be collectible as such, subject to Section 8.2 above.

Section 8.10. CONFESSION OF JUDGMENT: IN ORDER TO EXPEDITE THE ASSOCIATION'S COLLECTION OF ANY DELINQUENT ASSESSMENT, EACH LOT OWNER (BY THE ACCEPTANCE OF THE DEED TO HIS LOT) SHALL BE DEEMED TO HAVE APPOINTED ANY ONE OR MORE MEMBERS OF THE BOARD OF DIRECTORS THE ATTORNEY-IN-FACT FOR SUCH LOT OWNER TO CONFESS JUDGMENT AGAINST SUCH LOT OWNER IN ANY COURT OF COMPETENT JURISDICTION IN NORTH CAROLINA, FOR ANY SUCH UNPAID ASSESSMENT(S), WHICH APPOINTMENT (BEING FOR SECURITY) SHALL BE IRREVOCABLE; AND FOR SO DOING A COPY OF THIS ARTICLE 12 AND SAID DEED, BOTH VERIFIED BY AFFIDAVIT, SHALL BE A SUFFICIENT WARRANT. THE AUTHORITY GRANTED HEREIN TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY EXERCISE THEREOF BUT SHALL CONTINUE FROM TIME TO TIME AND AT ALL TIMES UNTIL THE DECLARATION SHALL BE TERMINATED.



Section 8.11. IMPLEMENTATION: The Association shall adopt in its By-Laws such additional or other procedures and requirements as it deems necessary and desirable to implement the provisions of this Article 8, and to otherwise provide for the efficient fiscal operation and management of the Open Spaces (including boat dock, boat basin, and roads).

**ARTICLE 9**  
**INSURANCE**

Section 9.1. GENERALLY: The Association shall acquire and pay for insurance subject to the following:

a. Such insurance as the Board of Directors deems advisable in the operation, and for the protection, of the Open Spaces (including boat dock, boat basin, and roads).

b. The amount of property insurance obtained pursuant to the Act shall be equal to the full insurable replacement value of the insured property, without deduction for depreciation. Such insurance policy(ies) may, at the option of the Board of Directors, contain a "deductible" provision in an amount determined by the Board of Directors but not to exceed Five Thousand and 00/100 (\$5,000.00) Dollars.

c. Each Lot Owner and the Association hereby waives and releases any and all claims which he or it may have against any other Lot Owner, the Association, the Board of Directors and members thereof, the Declarant and their respective employees and agents, for damage to the Open Spaces (including boat dock, boat basin, and roads), or to any personal property located in the Open Spaces (including boat dock, boat basin, and roads), caused by fire or other casualty or any act or omission of any such party to the extent that such damages is covered by fire or other form of hazard insurance.

d. If the act or omission of a Lot Owner, or of a member of his family, a household pet, guest, occupant or visitor of such Lot Owner, shall cause damage to the Open Spaces (including boat dock, boat basin, and roads), or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Lot

Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board of Directors, to the extent such payment is not waived or released under the provisions of subsection (c) above.

e. Any release or waiver referred to in subsection (c) and (d) hereof shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover thereunder. The Lot Owners and the Association, with regard to the insurance carried by each of them, shall use their best efforts to see that their insurance carriers agree that such release or waiver does not affect their rights to recover.

f. If the Association fails within sixty (60) days of an insured loss to initiate a claim for damages recoverable under the property insurance policy(ies) obtained by the Association, any Lot Owner may initiate such a claim on behalf of the Association. At least once every three (3) years, but more frequently if in the Board of Directors' judgment the Open Spaces (including boat dock, boat basin, and roads) are rapidly appreciating in value, the Board of Directors shall cause an appraisal of the Open Spaces (including boat dock, boat basin, and roads) to be made for the purpose of determining the current full insurable replacement value of the insured property, without considering depreciation, and the Board of Directors shall change the amount of property insurance on the Open Spaces (including boat dock, boat basin, and roads) to the amount of the then current full insurable replacement value of the Open Spaces (including boat dock, boat basin, and roads) as established by such appraisal.

g. Comprehensive public liability and property damage insurance shall be in such limits as the Board of Directors shall deem desirable provided that such limit shall not be less than One Million and 00/100 (\$1,000,000.00) Dollars per occurrence, for personal injury and/or property damage, insuring the Declarant, the Association, the members of the Board of Directors, and their respective agents and employees, and the Lot Owners, from any liability to the public or to the Lot Owners, their tenants or invitees, relating in any way to

the ownership and/or use of the Open Spaces (including boat dock, boat basin and roads) or any part thereof.

h. The Association may obtain such other forms of insurance as the Board of Directors shall elect to effect including Board of Directors and officers liability insurance and such Worker's Compensation insurance as may be necessary to comply with applicable laws.

i. The Association shall obtain a fidelity bond or bonds or insurance to protect against dishonest acts on the part of the members of the Board of Directors, officers, agents, employees, volunteers and all others who handle, or are responsible for handling, funds of the Association. Such bond or bonds or insurance shall name the Association as an obligee or insured and shall be in an amount equal to One Hundred Fifty (150%) percent of the then current Common Expense budget or such higher amount as the Board of Directors deems appropriate. Such bond or bonds or insurance shall contain a waiver of defense based upon the exclusion or persons who serve without compensation from the definition of "employee" or other appropriate provisions to assure coverage of such persons.

j. Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Association, fees and expenses of the insurance trustee, if any, and the cost of any appraisal which the Board of Directors deems advisable in connection with any insurance, shall be Common Expenses.

k. The Association shall use its best efforts to secure policies providing that the policies cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Lot Owners or any officer or employee of the Association without a prior demand in writing that the Association cure the defect and without a reasonable period of time thereafter in which to cure the same.

ARTICLE 10  
LIMITED LIABILITY AND INDEMNIFICATION

Section 10.1. LIMITED LIABILITY OF THE BOARD OF DIRECTORS:  
The Board of Directors, and its members in their capacity as

members, officers and employees:

a. Shall not be liable for the failure of any service to be obtained by the Association and paid for by the Association, or for injury or damage to Persons or property caused by the elements or by another Lot Owner or person on the Real Estate, unless each such instance, such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Board of Directors;

b. Shall not be liable to the Lot Owners as a result of the performance of the members of the Board of Directors' duties for any mistake of judgment, negligence or otherwise, except for the members of the Board of Directors' own willful misconduct or gross negligence;

c. Shall have no personal liability in contract to a Lot Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Board of Directors or the Association in the performance of the duties of the members of the Board of Directors;

d. Shall not be liable to a Lot Owner, or such Lot Owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such Lot Owner or his tenants, employees, agents, customers or guests in a Lot, or in or on the Open Spaces (including boat dock, boat basin, and roads), except for the members of the Board of Directors' own willful misconduct or gross negligence;

e. Shall have no personal liability in tort to a Lot Owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for the members of the Board of Directors own willful misconduct or gross negligence in the performance of their duties; and

f. Shall have no personal liability arising out of the use, misuse or condition of any Building or the Open Spaces (including boat dock, boat basin, and roads), or which might in any other way be assessed against or imputed to the members of the Board of Directors as a result of or by virtue of their performance of their

duties, except for the members of the Board of Directors own willful misconduct or gross negligence.

Section 10.2. NOTICE OF COMPLAINTS: Complaints brought against the Association, the Board of Directors or the officers, employees or agents thereof in their respective capacities as such, shall be directed to the Board of Directors of the Association, which shall promptly give written notice thereof to the Lot Owners and such complaints shall be defended by the Association. The Lot Owners and the holders of mortgages on Lots shall have no rights to participate in such defense other than through the Association.

Section 10.3. INDEMNIFICATION AGAINST THIRD PARTY ACTIONS: The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Board of Directors or Association) by reason of the fact that he is or was a member of the Board of Directors, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by an adverse judgment, order, or settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 10.4. INDEMNIFICATION AGAINST ASSOCIATION ACTION: The Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, by or in the right of the Board of Directors or the Association, by reason of the fact that he is or was a member of the Board of Directors, officer, employee or agent of the Association, or is or was serving at the request of the

Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 10.5. DETERMINATION: To the extent that a member of the Board of Directors, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 10.3 or 10.4 hereof, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Section 10.3 or 10.4 hereof shall be made by the Association only upon a determination that indemnification of the Board of Directors member, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Sections 10.3 or 10.4 hereof. Such determination shall be made either (i) by the Board of Directors by a majority vote of a quorum consisting of all members who were not parties to such action, suit or proceeding, or (ii) by independent legal counsel in a written opinion, or (iii) by the Lot Owners by the affirmative vote of a majority of the Lot Owners at any meeting duly called for such purpose.

Section 10.6. ADVANCES: Expenses incurred in defending a civil or criminal action, suit or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon a majority vote of the Board of Directors and upon receipt of an undertaking by or on behalf of the Board of Directors member, officer, employee, or agent to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article.

Section 10.7. SCOPE OF INDEMNIFICATION: The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, By-Laws, agreements, vote of disinterested Lot Owners or members of the Board of Directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this Article shall apply to all present and future members of the Board of Directors, officers, employees, and agents of the Association, and shall continue as to a person who has ceased to be a member of the Board of Directors or an officer, employee or agent, shall inure to the benefit of the heirs and personal representatives of all such Persons and shall be in addition to all other rights which such Persons may be entitled as a matter of law.

Section 10.8. INSURANCE: The Association may purchase and maintain insurance on behalf of any person who was or is a member of the Board of Directors, officer, employee, or agent of the Association, or who was or is serving at the request of the Association as a trustee, director, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit), against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of North Carolina, as the same may be hereafter amended or modified.

Section 10.9. PAYMENTS AND PREMIUMS: All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute expenses of the Association and shall be Common Expenses.

## ARTICLE 11 EFFECT AND ENFORCEMENT

Section 11.1. RESERVATIONS AND RESTRICTIONS TO RUN WITH LAND: All of the covenants, conditions, restrictions, reservations, and servitudes set forth herein shall run with the land and each Lot Owner, by accepting a deed to any Lot, accepts the same subject to such covenants, restrictions, reservations, and servitudes and agrees for himself, his heirs, administrators, and assigns to be bound by each of such covenants, conditions, restrictions, reservations, and servitudes jointly, separately, and severally.



Section 11.2. REMEDIES FOR VIOLATIONS: For a violation or a breach of any of these covenants, conditions, reservations and restrictions by any person claiming by, through, or under the Declarant, or by virtue of any judicial proceedings, the Declarant, and the Lot Owners, or any of them severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing right, the Declarant shall have the right, whenever there shall have been built on any Lot any structure which is in violation of these restrictions, to enter upon the Lot where such violation of these covenants, conditions, reservations and restrictions exists and summarily abate or remove the same at the expense of the owner, and any such entry and abatement or removal shall not be deemed a trespass.

a. Should the Declarant or any Lot Owner employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions, or reentry, by reason of such breach, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the Lot Owner and the reversionary owner shall have a lien upon such Lot or Lots to secure payment of all such accounts.

b. Should the owner fail, neglect, or refuse to satisfy and discharge any lien arising hereunder within thirty (30) days, the Declarant or Lot Owner in whose favor said lien has arisen, their respective heirs, successors and assigns, shall have the right to interest on such liens at the rate of eight (8%) percent per annum and shall be entitled to receive all costs of collection, including a reasonable attorney's fee.

c. The breach of any of the foregoing covenants, conditions, reservations or restrictions, shall not defeat or render invalid the lien on any mortgage made in good faith for value as to any Lot of Lots or portions of Lots, but these covenants, conditions, reservations, and restrictions shall be binding upon and effective against any such mortgagee or owner thereof, whose title thereto or whose grantor's title is or was acquired by foreclosure, or otherwise.

d. No delay or omission on the part of the Declarant or the Lot Owners in the Real Estate in exercising any rights, power, or remedy herein provided, in the event of

any breach of the covenants, conditions, reservations, or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Declarant for or on account of its failure to bring any action on account of any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions herein which may be unenforceable by the Declarant.

Section 11.3. SEVERABILITY: Each and every of the covenants, restrictions, reservations, and servitudes contained herein shall be considered to be an independent and separate covenant and agreement and in the event any one or more of the foregoing covenants, conditions, reservations, or restrictions shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions, reservations, and restrictions not so declared to be void, but all of the remaining covenants, conditions, reservations, and restrictions not so expressly held to be void shall continue unimpaired and in full force and effect.

Section 11.4. RULE AGAINST PERPETUITIES: In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such terms shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of North Carolina.

Section 11.5. PUBLIC RIGHTS: The Real Estate shall be subject to any and all rights and privileges which the Township of Nags Head, County of Dare or the State of North Carolina, may have acquired through dedication or the filing or recording of maps or plats of such premises, as authorized by law, and provided further, that no covenants, conditions, reservations, or restrictions, or acts performed shall be in conflict with any Township or County Zoning Ordinance or Law.

ARTICLE 12  
DURATION OF COVENANTS, RESTRICTIONS,  
RESERVATIONS AND SERVITUDES

Section 12.1. DURATION: All of the foregoing covenants, conditions, reservations, and restrictions shall continue and remain in full force and effect at all times as against the owner of any lot in such premises, regardless of how he acquired title, until the commencement of the calendar year 2010, on which date these covenants, conditions, reservations, and restrictions shall terminate and end, and thereafter be of no further legal or equitable effect on the Real Estate or any Lot Owner; provided, however, that these covenants, conditions, reservations, and restrictions shall be automatically extended for a period of ten (10) years, and thereafter in successive ten-year periods, unless on or before the end of one of such extension periods or the base period the Lot Owners of a majority of the Lots in the Real Estate shall be written instrument duly recorded declare a termination of the same. Although these covenants, conditions, reservations, and restrictions may expire as herein provided, any and all reversions for breach of these covenants, conditions, reservations, or restrictions committed or suffered prior to such expiration shall be absolute.

ARTICLE 13  
DECLARANT'S RIGHTS

Section 13.1. CONTROL:

a. Until the Sixtieth (60th) day after conveyance of fifty (50) Lots to Lot Owners other than Declarant, Declarant shall have the right to appoint and remove any and all officers and members of the Board of Directors. Declarant may not unilaterally remove any members of the Board of Directors elected by Lot Owners other than Declarant.

b. No later than the earlier of (i) seven (7) years after the date of the recording of this Declaration, or (ii) One Hundred Eighty (180) days after ninety (90%) percent of the Lots which may be constructed on the Property and the Additional Real Estate have been conveyed to Lot Owners other than the Declarant, all Declarant-appointed members of the Board of Directors shall resign, and the Lot Owners (including Declarant to

the extent of Lots owned by Declarant) shall elect a new five (5) member Board of Directors, and the By-Laws of the Association shall be amended to increase the number of members of the Board of Directors from three (3) to five (5).

ARTICLE 14  
AMENDMENT OF DECLARATION

Section 14.1. AMENDMENT GENERALLY: This Declaration may be amended only in accordance with the express provisions of this Declaration.

Section 14.2. AMENDMENT BY LOT OWNERS: This Declaration may be amended by affirmative vote of Two-Thirds (2/3) of all Lot Owners (including Lots owned by Declarant), pursuant to procedures applicable to voting by members of the Association as set forth in its By-Laws.

Section 14.3. RIGHTS OF DECLARANT: Notwithstanding any provision herein contained to the contrary, no change, modification or amendment which affects the rights, privileges or obligations of the Declarant shall be effective without the prior written consent of the Declarant.

Section 14.4. OTHER AMENDMENTS: If any amendment is necessary in the judgment of the Declarant to cure any ambiguity or to correct or supplement any provision of this Declaration or the Plats which is defective or inconsistent with any other provision hereof or thereof, or to change, correct or supplement anything appearing or failing to appear in the Plats which is incorrect, defective or similarly inconsistent, the Declarant may, at any time and from time to time effect such amendment without the approval of the Lot Owners or their Mortgagees. Each such amendment shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, execution and acknowledgment by one or more officers of the Declarant.



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Doc Code: DECL  
BARBARA M GRAY, REGISTER OF DEEDS DARE CO, NC

Prepared by: Windy H. Rose  
  
Return to: Windy H. Rose  
Attorney at Law  
PO Box 54  
Columbia, NC 27925

AMENDED DECLARATION OF CONDITIONS,  
RESERVATIONS AND RESTRICTIONS OF  
**HERITAGE POINT**

NORTH CAROLINA  
DARE COUNTY

KNOW ALL MEN BY THESE PRESENTS, that this Amended Declaration of Conditions, Reservations and Restrictions, made and entered into on this 17 day of January, A.D., 2007, by Heritage Point Homeowners Association on Roanoke Island, Inc.; hereinafter referred to as the Association.

WITNESSETH:

WHEREAS the Association has succeeded to the position of the Declarant named in the Amended Declaration of Conditions, Reservations and Restrictions recorded in Deed Book 816 at Page 258 in the Dare County Registry on or about September 8, 2004; and

WHEREAS pursuant to Article 14 of the Amended Declaration of Conditions, Reservations and Restrictions, the Declaration may be amended by affirmative vote of Two-Thirds (2/3) of all Lot Owners pursuant to the Declarant's bylaws; and

WHEREAS pursuant to the bylaws adopted by the Association, the Association held its annual meeting on September 23, 2006 and gave proper notice to its members of an issue of proposed changes to the Amended Declaration of Conditions, Reservations and Restrictions; and

WHEREAS more than the necessary 67% of the members approved the proposed changes to the Amended Declaration of Conditions, Reservations and Restrictions at the September 23, 2006 annual meeting.

NOW, THEREFORE, the Declarant hereby amends the Amended Declaration of Conditions, Reservations and Restrictions recorded in Deed Book 816 at Page 258 in the Dare County Registry as follows:



ARTICLE 4  
USE RESTRICTIONS

**Section 4.1(a) is amended as follows:**

a. RESIDENTIAL USE: No part of the Real Estate shall be used for other than housing and the related common purposes for which the planned residential development was designed. Each Lot or any two or more adjoining Lots used together shall be used as a residence for a single family or such other uses permitted by this Declaration and for no other purposes. If zoning regulations permit professional activities to be conducted within the Lots, application may be made by a Lot Owner to the Declarant for approval to commence such newly permitted use of his Lot. Each such application shall be considered by the Declarant on an individual basis. Once the Declarant has given its approval to a particular use of a Lot, it may not revoke such approval so long as the nature and scope of the approved use remains unchanged. No Building or structure intended for or adapted to business purposes, and no apartment house, double house, lodging house, rooming house, hospital, sanatorium or doctor's office, or other multiple-family dwelling shall be erected, placed, permitted or maintained on such premises, or any part thereof. No improvement or structure whatever, other than a first class private dwelling house, patio walls, underground swimming pool, and customary outbuilding, garage, servants' quarters or guest house may be erected, placed or maintained on any Lot in the Real Estate. No Lot Owner shall permit his Lot to be used or occupied for any prohibited purpose. No part of the real estate shall be used for any rental purposes without first obtaining permission from the Declarant. Rentals/leases shall be for a minimum period of one (1) year.

ARTICLE 8  
BUDGETS; COMMON EXPENSES; ASSESSMENTS AND ENFORCEMENT

**Section 8.3 is amended as follows:**

Section 8.3. LIMITATION ON EXPENDITURES: All expenses, charges and costs of the maintenance, repair or replacement of the Open Spaces (including boat dock, boat basin, and roads), roads, and any other expenses, charges or costs which the Association may incur or expend pursuant hereto, shall be approved by the Board of Directors, and a written memorandum thereof prepared and signed by the Treasurer of the Association. There shall be no structural alterations, capital additions to, or capital improvements on the Open Spaces (including boat dock, boat basin, and roads) (other than for purposes of repairing, replacing and restoring portions of the Open Spaces including boat dock, boat basin and roads) requiring an expenditure in excess of Ten Thousand Dollars (\$10,000.00) without the prior approval of the Lot Owners entitled to cast two-thirds (2/3) of the votes of all Lot Owners. If approved, the expenditure will be funded by special assessment and not by the reserve for replacement and contingencies or by budgeted amounts for common expense.

IN WITNESS WHEREOF, this Amended Declaration of Conditions, Reservations and Restrictions has been signed and executed by the Declarant the day and year first above written.

**Heritage Point Homeowners Association on Roanoke Island, Inc.**

  
\_\_\_\_\_  
John Buzilow, President

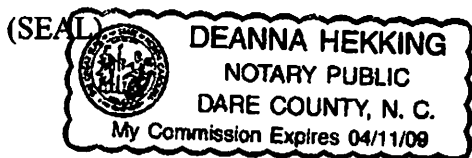


STATE OF North Carolina,  
CITY/COUNTY OF Dare:

I, Deanna Hekking, a Notary Public of the County and State aforesaid, do hereby certify that John Buzilow personally appeared before me this day and acknowledged that he is president of Heritage Point Homeowners Association on Roanoke Island, Inc., a non-profit corporation, and he, as president, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal this 17 day of January, 2007.

My commission expires: 04/11/09.



Deanna Hekking  
Notary Public



B: 1821 P: 366

12/29/2009 02:17 PM

Doc Code: ADMT

Vanzolla McMurren, Register of Deeds Dare CO, NC

Doc Id: 6269689

Receipt #: 09-17344

Prepared by Linda H. McCown and return to HPHOA, 142 Fort Hugar Way, Manteo, NC 27954  
AMENDED DECLARATION OF CONDITIONS, RESERVATIONS AND RESTRICTIONS  
Of  
HERITAGE POINT, County of Dare, State of North Carolina

THIS AMENDED DECLARATION is made this 12 day of September, 2009.

WHEREAS, on March 17, 1992, RIAL CORPORATION, a North Carolina Corporation, owner in fee simple of real estate located in the Town of Manteo (outside), Dare County, North Carolina filed a Declaration and Establishment of Conditions, Reservations and Restrictions for the Heritage Point Plan of Lots, which is recorded in the Registry of Deeds in Dare County, North Carolina in Deed Book Volume 793, Page 64;

And WHEREAS, on August 4, 2003, RIAL CORPORATION transferred title and control to Heritage Point Home Owners Association;

And WHEREAS, Heritage Point Home Owners Association desires to ratify and confirm the existing conditions, reservations and restrictions, subject to the amendments described herein.

**ARTICLE 1 PROPERTY**

**Section 1.1 DECLARANT; PROPERTY; COUNTY:**

Heritage Point Home Owners Association, a North Carolina Corporation (the "Declarant"), owner in fee simple of the common areas of the subdivision as set forth in Deed Book 1589, Page 415, located on Roanoke Island, Town of Manteo (outside), Dare County, North Carolina, together with the required affirmative vote of at least sixty-seven (67%) of the votes in the Association, hereby submits the Real Estate to the following conditions, reservations and restrictions.

**ARTICLE 2 DEFINED TERMS**

**Section 2.1 TERMS DEFINED:** All capitalized terms used herein shall have ascribed to them the following meanings, otherwise defined herein.

- a. "Association" means the Heritage Point Homeowners Association (HPHOA)



- b. "Board of Directors" means the Board of Directors of the Association.
- c. "Building(s)" means any building(s) constructed or erected on the Real Estate.
- d. "Declarant" means the Declarant described in Section 1.1 above and all successors to any of Declarant's rights.
- e. "Declaration" means this document, as the same may be amended from time to time.
- f. "Open Space(s)" means the Open Space(s) as shown on the Plat(s), and all buildings and structures erected thereon and improvements thereto. Open Space(s) shall also include the boat dock, boat basin, fishing pier and roads.
- g. "Plat(s)" means the plat(s) recorded, subdividing the Real Estate and made a part hereof, as the same may be amended from time to time.
- h. "Real Estate" means the real estate described in Deed Book Volume 793, Page 64.
- I. "Lot" means a lot as described in the Plats.
- j. "Lot Owner" means the owner in fee simple of any Lot or any person or persons purchasing a Lot under contract (until such contract is fully performed and legal title conveyed of record).
- k. "Common Expenses" means the expense of owning and maintaining the Open Spaces (including boat dock, boat basin, and roads), drainage and storm water detention facilities within or appurtenant to the Real Estate and of providing all common community services required or desired for the general use and benefit of all Lot Owners.
- l. "Completed Construction" means a certificate of occupancy has been issued by the governing authority and initial landscaping has been completed. See Section 5.2c for additional requirements.

### **ARTICLE 3 EASEMENTS**

#### **Section 3.1 UTILITY EASEMENTS;**

The Real Estate shall be, and is hereby made subject to easements in favor of the Declarant, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Real Estate. The easements created in this Section 3.1 shall include, without limitation, rights of Declarant or the providing utility or service company, or governmental agency or authority, to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer

and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electric wires, conduits and equipment and ducts and vents over, under, through, along and on the Lots, street rights-of-way and Open Spaces (including boat dock, boat basin, and roads). Notwithstanding the foregoing provision of this Section 3.1, unless approved in writing by the Lot Owner or Lot Owners affected thereby, any such easement through a Lot shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Lot by the Declarant, or as shown on the Plats, or so as not to materially interfere with the use or occupancy of the Lot or any Building by its occupants.

**Section 3.2 EASEMENTS FOR ACCESS TO REAL ESTATE;**

Declarant reserves a non-exclusive perpetual right of access and easement on, over and under those portions of the Open Spaces (including boat dock, boat basin, and roads) for the purpose of pedestrian and vehicular ingress, egress and regress to all or any part of the Real Estate, including the right to modify the location of improvements to the Open Spaces (including boat dock, boat basin, and roads) to facilitate such ingress, egress and regress, including without limitation the removal of obstructions to the exercise of such rights of ingress, egress and regress, and the grading or re-grading of landscaped areas of the Open Spaces (including boat dock, boat basin, and roads).

**Section 3.3 DECLARANT'S EASEMENT TO CORRECT DRAINAGE;**

Declarant reserves an easement on, over and under those portions of the Open Spaces (including boat dock, boat basin, and roads) for all purposes of maintaining and correcting drainage of surface water in order to maintain reasonable standard of health, safety and appearance. The easement created by this Section 3.3 expressly includes the right to cut any trees, bushes or shrubbery, to grade the soil, or to take any other action reasonably necessary to achieve this purpose, following which the Declarant shall restore the affected property as closely to its original condition as practicable.

**Section 3.4 DECLARANT'S EASEMENT FOR DEVELOPMENT OF REAL ESTATE;**

Declarant reserves an easement on, over and under those portions of the Open Spaces (including boat dock, boat basin, and roads) for all purposes relating to the construction, development, leasing, and sale of improvements on the Real Estate. This easement shall include without limitation, the right of vehicular and pedestrian ingress and egress, the right to park motor vehicles and to engage in construction and marketing activities of any nature whatsoever, including the movement and storage of building materials and equipment, the conduct of sales, leasing and management activities, the maintenance of models and offices and the erection and maintenance of directional and promotional signs.

**Section 3.5 EASEMENT FOR USE OF COMMON SPACES;**

- a. **GRANT OF EASEMENT;** Each Lot Owner and each person lawfully residing on the real Estate is hereby granted a non-exclusive perpetual right and easement of access to and enjoyment in common with others of the Open Spaces (including boat dock, boat basin, and roads).

- b. EXTENT OF EASEMENT; The rights and easements of access and enjoyment created hereby shall be subject to the right of the Association to adopt rules and regulations governing the use of the Open Spaces (including boat dock, boat basin, and roads).
- c. DOCK/BOAT BASIN EASEMENT; Each Lot Owner shall have a right to obtain one (1) boat slip from the Association. Boat slips are not deeded. This right cannot be assigned, transferred or conveyed. This right is limited only to Lot Owners in Heritage Point and to no others. Boat slip will be assigned based on size of boat and lift request upon arrival of boat. Lot Owner must own any craft stored at boat slip and maintain insurance and personal liability for such craft. Lot Owners can not authorize any other individuals the use of the marina docks, boat slips, boat ramp, or fishing pier unless those individuals are accompanied by the lot owner.

#### ARTICLE 4 USE RESTRICTIONS

##### **Section 4.1    USE AND OCCUPANCY OF LOTS & BUILDINGS**

The occupancy and use of Lots and Buildings shall be subject to the following restrictions:

- a. RESIDENTIAL USE: No part of the Real Estate shall be used for other than housing and the related common purposes for which the planned residential development was designed. Each Lot or any two or more adjoining Lots used together as one building site shall be used as a residence for a single family or such other uses permitted by this Declaration and for no other purposes. If zoning regulations permit professional activities to be conducted with the Lots, application may be made by a Lot Owner to the Declarant for approval to commence such newly permitted use of his Lot. Each such application shall be considered by the Declarant on an individual basis. Once the Declarant has given its approval to a particular use of a Lot, it may not revoke such approval so long as the nature and scope of the approved use remains unchanged. No building or structure intended for or adapted to business purposes, and no apartment house, double house, lodging house, rooming house, hospital, sanatorium or doctor's office, or other multiple-family dwelling shall be erected, placed, permitted or maintained on such premises, or any part thereof. No improvement or structure whatever, other than a first class private dwelling house, patio walls, underground swimming pool, and customary outbuilding, garage, servants' quarters or guest house may be erected, placed or maintained on any Lot in the Real Estate. No Lot Owner shall permit his Lot to be used or occupied for any prohibited purpose. No part of the real estate shall be used for any rental purposes without first obtaining permission from the Declarant. Rentals/leases shall be for a minimum period of one (1) year.
- b. COMMERCIAL ACTIVITIES; Except as set forth in subsection (a) above, no industry, business, trade, occupation or profession of any kind, commercial, religious,

educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Real Estate; provided, however, that nothing contained in this subsection shall be construed to prevent or prohibit a Lot Owner from maintaining his personal professional library, keeping his personal business or professional records or accounts, handling his personal business or professional telephone calls or conferring with business or professional associates, clients or customers, on his Lot.

- c. PETS; No animals, livestock, fowl or poultry of any kind shall be raised, bred, or kept on any Lot or in the Open Spaces (including boat dock, boat basin, and roads), except household pets not to exceed three (3) for the pleasure and use of the occupants, subject to Rules and Regulations adopted by the Declarant, which Rules and Regulations may exclude any kind of pet by type or category, provided that permitted household pets are not kept, bred or maintained for any commercial purpose; and provided further that any such permitted pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from any Lot upon three (3) days written notice from the Declarant. Pets must be confined to the Lot either by fence or restraint and not permitted to roam free from the Lot. Any pets that do leave the Lot must be kept under control, restrained by leash or other means, with attending person responsible to clean up any droppings.
- d. SIGNS; No sign shall be erected, placed, permitted, maintained or displayed upon any Lot unless approved by the Board of Directors.
- e. COMMERCIAL VEHICLES; No motor homes, commercial vehicles, construction, or like equipment or mobile or stationary trailers of any kind shall be stored or parked on any Lot in the Real Estate or the Open Spaces (including boat dock, boat basin, and roads) except while parked in a garage completely enclosed. Boat trailers and motor homes shall be permitted on the Lot Owners Lot, but must be parked either to the rear of the house, rear of driveway or in a garage completely enclosed. Company cars and light trucks, with names and logos, driven to and from work will be permitted.
- f. NUISANCES; No horses, cattle, swine, goats, poultry, or fowl shall be kept on any Lot. No clotheslines or drying yards shall be permitted unless concealed by hedges, lattice work, or screening acceptable to the Declarant. No weeds, underbrush, or other unsightly growths shall be permitted to grow or remain upon any Lot and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb



the peace, quiet, comfort, or serenity of the occupants of surrounding Lots. In the event that any Lot Owner shall fail or refuse to keep his Lot free from weeds, underbrush, or refuse piles or other unsightly growths or objects, then the Declarant may enter upon such lands and remove the same at the expense of the Lot Owner, which such entry shall not be deemed a trespass, and in the event of such a removal a lien shall arise and be created in favor of the Declarant and against such Lot for the full amount chargeable to such Lot, and such amount shall be due and payable within Thirty (30) days after demand is made therefore.

g. OBSTRUCTION OF EASEMENTS; No Lot Owner shall do any work or any other act which would impair any easement or hereditament without the consent of the Declarant.

h. CONSTRUCTION RESTRICTIONS;

- I. The only new Home styles allowed fall within the following general descriptions - Farmhouse, Cape Cod, Colonial, Country, Traditional and Victorian. Any deviations from these preferred styles shall be only with approval of the Architectural Review Committee; judgment of the Committee is final. In order to preserve the unique character of Heritage Point, no two houses will be allowed which have the same exterior design.
- ii. The primary roof of the home shall have a minimum pitch of 8:12; minor roofs such as porches may have a lesser pitch if necessary. Only architectural profile shingles shall be used on all roofs (minimum standard). Variations shall require Architectural Review Committee approval.
- iii. All porches shall be painted or stained to coordinate with the main detailing on the house. Porch decks, steps and other horizontal surfaces shall be finished with paint or stain - no unfinished wood shall be exposed to the exterior of the property.
- iv. A skirting of brick (or lattice and brick combination skirting where the crawl space is exposed to the exterior of the building line) shall be required around the base of all houses, porches, decks and out buildings. No other material shall be allowed to form the base of the building(s). No openings shall be allowed around the base of the building and, if used, no exposed pilings will be allowed.
- v. Clearing of large trees shall be done only to install improvements; no clearing of the site shall commence until a Clearing Plan is approved by the Architectural Review Committee. No clear cutting of the Lot is permitted. If excessive clearing is necessary for construction access then a tree



restoration plan must be approved by the Architectural Review Committee before any clearing commences.

- vi. Detached garages, storage buildings, pool houses and other exterior outbuildings are permitted only if the design is in conformance with the house (including matching materials and finishes) and is approved by the Architectural Review Committee. This applies to any outbuilding which may be constructed after the original home has been completed in accordance with Section 4.1.h.xi.
- vii. Pools shall be in ground style with no more than 2.0' of any portion of the pool surround above ground.
- viii. All exterior walls shall be brick, vinyl siding or shingles, composite fiber cement siding or shingles (Hardi-Plank) or wood if stained with solid color stain.
- ix. Any addition, extension or modernization to the exterior of the house after the house has been completed shall be subject to all the same requirements and constructions as a new property and shall be submitted for Architectural Committee Review in accordance with Section 4.1.h.xii.
- x. No through wall or through window heating or air conditioning units shall be allowed in the main residence. However, they may be used but not limited to enclosed unattached buildings such as hot tub houses, sitting rooms, work shops and other type buildings located in the rear of the main residence providing such units are not visible from the street.
- xi. During construction the homeowner and contractor shall comply with the HPHOA Construction Requirements.
- xii. All proposed construction shall be subject to review and approval of the HPHOA Architectural Review Committee. Current review fee of \$100.00 (subject to change by Architectural Review Committee) and a Development Bond (posted by the Homeowner) of \$1,000.00 (subject to change by Architectural Review Committee) must be submitted with the application for development. The Review Fee is non-reimbursable; the Bond will be reimbursed, less any deductions for damage or non-compliance, after all improvements (including landscaping per Section 5.2.c) to the property have been completed.





**Section 4.2** USE OF OPEN SPACES (including boat dock, boat basin, and roads):

The use of Open Spaces (including boat dock, boat basin, and roads) shall be subject to the following restrictions;

- a. OBSTRUCTION OF OPEN SPACES (including boat dock, boat basin, and roads): There shall be no obstruction of the Open Spaces nor shall anything be stored in the Open Spaces without the prior consent of the Board of Directors except as herein expressly provided. Without limiting the generality of the foregoing, no clothes, sheets, blankets, laundry or other articles of any kind shall be hung out or exposed on any part of the Open Spaces. The Open Spaces shall be kept free and clear of rubbish, debris and other unsightly materials. No benches, chairs or other personal property shall be left on, nor shall any playing, lounging, parking of baby carriages, playpens, bicycles, wagons, toys or vehicles be permitted on, any part of the Open Spaces without the prior consent of, and subject to any regulations of the Board of Directors. Space permitting, boat trailers may be parked at the boat basin in a manner which does not obstruct traffic or use of the basin. Said boat trailer parking is limited to one (1) week.
- b. ENCROACHMENTS ON OPEN SPACES (including boat dock, boat basin and roads): No Lot Owner shall make any installation which extends beyond the physical limits of the Lot Owner's Lot into the Open Spaces (including boat dock, boat basin, and roads).
- c. NUISANCES: No noxious or offensive activity shall be carried on in any Lot or in the Open Spaces (including boat dock, boat basin, and roads), nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Lot Owners or occupants, or which interferes with the peaceful possession or proper use of any of the Lots or of the Open Spaces (including boat dock, boat basin, and roads).
- d. INSURANCE RISK; COMPLIANCE WITH LAW; WASTE: Nothing shall be done or kept in the Open Spaces (including boat dock, boat basin, and roads) which will increase the rate of insurance thereon, or contents thereof, without the prior written consent of the Association. No Lot Owner shall permit anything be done or kept in his Lot or in the Open Spaces (including boat dock, boat basin and roads) which will violate any law, statute, ordinance or regulation or any governmental body or which will result in the cancellation of any insurance maintained by the Association. No waste shall be committed in the Open Spaces (including boat dock, boat basin, and roads).
- e. RULES AND REGULATIONS: Reasonable Rules and Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Open Spaces (including boat dock, boat basin and roads), may be promulgated from time to time by the Association, subject to the right of the Association to change such Rules and Regulations. Copies of the then current Rules and Regulations and any amendments thereto shall be posted at the marina bulletin board promptly after the adoption of such Rules and Regulations or any amendments thereto.

- f. GOLF CARTS and OTHER NON LICENSED VEHICLES: Use of golf carts and other non-licensed vehicles is permitted on Open Spaces. Declarant shall not be liable for any injuries incurred.

**Section 4.3 CONSTRUCTION AND OCCUPANCY:**

When the construction of any residence is once begun, work thereon must be prosecuted diligently and lot/homeowner must use his/her/its best efforts to complete said construction within one year. If completed construction takes longer than one year, a majority of the Architectural Review Committee shall determine reasonableness of delay and if determined unreasonable, give 30 day notice and if not completed by the date given, impose a fine of \$100 per month until completed. Further, no debris incidental to construction work on Lot may be placed on any other Lot in premises.

- a. OUTBUILDINGS: No outbuilding, garage, shed, tent, trailer, or temporary building of any kind shall be erected, constructed, permitted, or maintained prior to commencement of the erection of a residence, as is permitted hereby, and no outbuilding, garage, shed, tent, trailer, basement, or temporary building shall be used for permanent or temporary residence purposes; provided, however, that this paragraph shall not be deemed or construed to prevent the use of a temporary construction shed during the period of actual construction of any structure on any Lot in the Real Estate, nor the use of adequate sanitary toilet facilities for workmen which shall be provided during such construction.
- b. OCCUPANCY OF BUILDINGS: No Building erected upon any Lot shall be occupied in any manner while in the course of construction, nor at anytime prior to its being fully completed, as herein required. Nor shall any Building, when completed, be in any manner occupied until made to comply with the approved plans, the requirements herein, and all other covenants, conditions, reservations, and restrictions herein set forth.

**Section 4.4 MINING:**

Except for or in connection with any mining, mineral, gas drilling or oil drilling rights and/or similar operations given under prior instruments now binding upon the Real Estate, no derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Real Estate, nor shall any oil, natural gas, petroleum, asphaltic, or hydrocarbon products or minerals of any kind be produced or extracted there from.

**ARTICLE 5 ARCHITECTURAL CONTROL**

**Section 5.1 DECLARANT'S RIGHT TO CONTROL IMPROVEMENTS:**

For the purpose of further insuring the development of the premises as an area of high standards, the Declarant reserves the power to control the Buildings, structures, and other improvements placed on each Lot, as well as to make such exceptions to these covenants, conditions, reservations and restrictions as the Declarant shall deem necessary and proper. This Section shall be read in

conjunction with Section 4.1.h - Construction Restrictions.

- a. In accordance with Section 4.1.h.xii. prior to the start of construction, all plans and specifications must be submitted to the HPHOA Architectural Review Committee for its approval, said approval not to be unreasonably withheld.

**Section 5.2** MINIMUM STANDARDS: Notwithstanding the foregoing right to approve building plans, the following minimum standards shall apply to Buildings on the Lots in the Real Estate:

- a. No one-story Buildings shall be constructed on Lots with a fully enclosed first floor area of less than 1,800 square feet, exclusive of carport, garage, decks, and open porches. No two-story or higher Buildings shall be constructed with a fully enclosed first floor area of less than 1,000 square feet, or a total square footage of two floors not less than 2,200 square feet. No one and one-half story Building shall be constructed with a fully enclosed first floor area of less than 1,000 square feet.
- b. The exterior Building materials shall extend to grade level, and no building shall have an unfinished exposed foundation of concrete or concrete block.
- c. All lawns must be either seeded or sodded for the entire front area, both sides and rear of the residence, said seeding or sodding to be done within three (3) months or next immediate growing season after completion of the residence on any Lot, whichever first occurs. One large tree must be planted in front yard if Lot has been cleared out.
- d. Culverts must be placed in the drainage ditches along the roadways in the Plan so as to provide drive access and not block or damage the drainage ditches. These culverts must be placed and be of a diameter to maintain the designed drainage pattern. Culverts used other than under access driveways to extend lawn frontage shall not be allowed unless approved by Architectural Review Committee. Free fall drainage of the drainage ditches must be maintained at all times.

**Section 5.3** SUBDIVISION OF LOTS:

None of the Lots shall at any time be subdivided. A single Lot, together with contiguous portion or portions of one or more Lots, may be used for one building site.

## **ARTICLE 6 SETBACKS AND BUILDING LINES**

**Section 6.1** BUILDING DEFINED:

For the purpose of this Section, Building shall also mean the main residence, the garage, and related outbuildings and all projections thereof such as bay, bow, or oriel windows, exterior chimneys, covered porches, porticos, loggias, and the like, but shall not include the eaves of such structures, open pergolas, uncover porches, open terraces, stoops, steps, or balustrades, the sides of which do

not extend more than Three (3') feet above the level of the ground floor of the main Building.

**Section 6.2    SETBACK AND BUILDING DISTANCES:**

No Building shall be erected nearer than Twenty-Five (25') feet to the street or Ten (10') feet to the Lot side line, except as may otherwise be shown on the Plats. Where one and one-half, two, or more Lots are acquired as a single building site, the side Lot lines shall refer only to the Lot lines boarding the adjoining property. Notwithstanding anything to the contrary herein, the Declarant shall have the right to permit reasonable modification of the setback requirements where in its sole discretion strict enforcement of these setback provisions would work a hardship.

**Section 6.3    WALLS AND FENCES:**

Walls and fences may be erected but only between the building line and the rear Lot line. Split-rail corner fences located at the corners of the Lot side line and the street bounding the Lot, shall not exceed Twelve (12') feet between each of the two (2) legs, and shall be no higher than four (4') feet.

- a. Prior to the start of construction, all plans and specifications must be submitted to the Declarant for its approval, said approval not to be unreasonably withheld.

**ARTICLE 7 HOMEOWNERS' ASSOCIATION**

**Section 7.1    MEMBERSHIP:**

For the purpose of ownership and maintenance of Open Spaces (including boat dock, boat basin, and roads) and all common community services of every kind and nature required or desired within the Real Estate for the general use of every Lot Owner, in accepting benefit of all Lot Owners, each and every Lot Owner, in accepting a deed or contract for any Lot in the Real Estate, agrees to and shall be a member of and be subject to the obligations and duly enacted By-Laws of Heritage Point Homeowners' Association, a nonprofit corporation.

**Section 7.2    POWERS OF THE ASSOCIATION:**

In addition to the powers set forth hereinabove, the Association shall have the following additional powers:

- a. **DELEGATION OF AUTHORITY:** To appoint committees of the Board of Directors (which need consist of only one (1) member of the Board of Directors) and to delegate authority to such committees the Board of Directors, subject to the approval and control of the Board of Directors.
- b. **CONTRACTING FOR SERVICES:** To engage the services of any persons (including, but not limited to, accountants and attorneys) deemed necessary by the Association at such compensation as is deemed reasonable by the Board of Directors, in the operation, repair, maintenance and management of the Open Spaces (including boat dock, boat basin, and roads), or in connection with any duty, responsibility or



right of the Association and to remove, at any time, any such personnel.

**Section 8.1 QUARTERLY ASSESSMENT:**

All Common Expense Assessments made in order to meet the requirements of the Association's annual budget shall be deemed to be adopted and assessed on a quarterly basis (rather than on an annual basis payable in quarterly installments) and shall be due and payable in advance on the first day of each quarter. Special assessments shall be due and payable in one or more quarterly payments, in advance, on the first day of each quarter, as determined by the Board of Directors.

**Section 8.2 SUBORDINATION OF CERTAIN CHARGES:**

Any fees, charges, late charges, fines and interest which may be levied by the Association shall be subordinate to the lien of a prior recorded mortgage on a Lot.

**Section 8.3 LIMITATION ON EXPENDITURES:**

All expenses, charges and costs of the maintenance, repair or replacement of the Open Spaces (including boat dock, boat basin, and roads), and any other expenses, charges or costs which the Association may incur or expend pursuant hereto, shall be approved by the Board of Directors, and a written memorandum thereof prepared and signed by the Treasurer of the Association. There shall be no structural alterations, capital additions to, or capital improvements on the Open Spaces (including boat dock, boat basin, and roads) (other than for purposes of repairing, replacing and restoring portions of the Open Spaces including boat dock, boat basin and roads) requiring an expenditure in excess of Fifteen Thousand Dollars (\$15,000.00) without the prior approval of the Lot Owners entitled to cast two-thirds (2/3) of the votes of all Lot Owners. If approved, the expenditure will be funded by special assessment and not by the reserve for replacement and contingencies or by budgeted amounts for common expense.

**Section 8.4 RESERVE:**

Each annual budget for quarterly assessments of Common Expenses shall include an amount reasonably considered by the Board of Directors to be sufficient as a reserve for replacements and contingencies. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year may be charged first against such reserve, as the Board of Directors shall determine. In addition, the Association shall have the right to segregate all or any portion of the reserve for any specific replacement or contingency upon such conditions as the Board of Directors deems appropriate.

**Section 8.5 ACCOUNTING:**

On or before the 31<sup>st</sup> day of January of each calendar year, the Association shall supply to all Lot Owners an itemized accounting of the Common Expenses for the proceeding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the annual budget or quarterly assessments and leases and sales of property owned or managed by the Association on behalf of the Association, and showing the net excess or deficit of income over expenditures plus

reserves.

**Section 8.6 FURTHER ASSESSMENTS;**

If any annual budget proves inadequate for any reason, including nonpayment of any Lot Owner's quarterly assessments, or any nonrecurring Common Expense or any Common Expense not set forth in the annual budget as adopted, the Board of Directors may at any time levy further quarterly assessments according to each Lot Owner's membership in the Association. Such further quarterly assessments shall be payable over such period of time as the Board of Directors may determine. The Board of Directors shall serve notice of such further assessments on all Lot Owners by a statement in writing giving the amount and reasons therefore, and such further quarterly assessments shall become effective as determined by the Board of Directors.

**Section 8.7 SURPLUS;**

Any amounts accumulated from assessments for Common Expenses and income from the operation of the Open Spaces (including boat dock, boat basin, and roads) to which such Common Expenses pertain in excess of the amount required for actual Common Expenses and reserves for future Common Expenses; shall be credited to each Lot owner paying a share of such Common Expenses in proportion to the share of such Common Expenses paid by each such Lot Owner, said credits to be applied to the next quarterly assessments of Common Expenses due from said Lot Owners under the current fiscal year's budget, and thereafter, until exhausted.

**Section 8.8 ACCELERATION;**

If a Lot Owner is in default in the payment of the aforesaid charges or quarterly assessments for Sixty (60) days, the Board of Directors may, in addition to all other remedies in this Declaration contained, accelerate all other quarterly assessments to become due for the fiscal year in which such default occurs.

**Section 8.9 INTEREST AND CHARGES;**

All sums assessed by the Association against any Lot Owner as a regular or special assessment shall bear interest thereon at the then maximum legal rate (but not more than Fifteen (15%) percent per annum) from the Thirtieth (30<sup>th</sup>) day following default in payment of any quarterly assessment when due. Any delinquent Owner shall also be obligated to pay (I) all expenses of the Association, including reasonable attorney's fees, incurred in the collection of the delinquent assessments by legal proceedings or otherwise; (ii) any amounts paid by the Association for taxes or on account of superior liens or otherwise to protect its liens, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessments and shall be collectible as such, subject to Section 8.2 above.

**Section 8.10 CONFESSION OF JUDGMENT:**

In order to expedite the Association's collection of any delinquent assessment, each Lot Owner (by the acceptance of the Deed to His Lot) shall be deemed to have appointed any one or more members of the Board of Directors as the Attorney-In-Fact for such Lot Owner to confess judgement against such Lot Owner in any court of competent jurisdiction in North Carolina, for any such unpaid

assessment(s), which appointment (being for security) shall be irrevocable; and for so doing a copy of this Article 12 and said Deed, both verified by affidavit, shall be a sufficient warrant. The authority granted herein to confess judgment shall not be exhausted by any exercise thereof but shall continue from time to time and at all times until the Declaration shall be terminated.

**Section 8.11 IMPLEMENTATION:**

The Association shall adopt in its By-Laws such additional or other procedures and requirements as it deems necessary and desirable to implement the provisions of this Article 8, and to otherwise provide for the efficient fiscal operation and management of the Open Spaces (including boat dock, boat basin, and roads).

**ARTICLE 9 INSURANCE**

**Section 9.1 GENERALLY:**

The Association shall acquire and pay for insurance subject to the following:

- a. Such insurance as the Board of Directors deems advisable for the operation, and for the protection, of the Open Spaces (including boat dock, boat basin and roads).
- b. The amount of property insurance obtained pursuant to the Act shall be equal to the full insurable replacement value of the insured property, without deduction for depreciation. Such insurance policy(ies) may, at the option of the Board of Directors, contain a "deductible" provision in an amount determined by the Board of Directors but not to exceed Five Thousand Dollars (\$5,000.00).
- c. Each Lot Owner and the Association hereby waives and releases any and all claims which he or it may have against any other Lot Owner, the Association, the Board of Directors and members thereof, the Declarant and their respective employees and agents, for damage to the Open Spaces (including boat dock, boat basin, and roads), or to any personal property located in the Open Spaces (including boat dock, boat basin, and roads), or to any personal property located in the Open Spaces (including boat dock, boat basin, and roads), caused by fire or other casualty or any act or omission of any such party to the extent that such damages are covered by fire or other form of hazard insurance.
- d. If the act or omission of a Lot Owner, or of a member of his family, a household pet, guest, occupant or visitor of such Lot Owner, shall cause damage to the Open Spaces (including boat dock, boat basin, and roads), or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Lot Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board of Directors, to the extent such payment is not waived or released under the provisions of subsection (c) above.



- e. Any release or waiver referred to in subsection (c) and (d) hereof shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover there under. The Lot Owners and the Association, with regard to the insurance carried by each of them, shall use their best efforts to see that their insurance carriers agree that such release or waiver does not affect their rights to recover.
- f. If the Association fails within Sixty (60) days of an insured loss to initiate a claim for damages recoverable under the property insurance policy(ies) obtained by the Association, any Lot Owner may initiate such a claim on behalf of the Association. At least once every three (3) years, but more frequently if in the Board of Directors' judgment the Open Spaces (including boat dock, boat basin and roads) are rapidly appreciating in value, the Board of Directors shall cause an appraisal of the Open Spaces (including boat dock, boat basin and roads) to be made for the purpose of determining the current full insurable replacement value of the insured property without considering depreciation, and the Board of Directors shall change the amount of property insurance on the Open Spaces (including boat dock, boat basin, and roads) to the amount of the then current full insurable replacement value of the Open Spaces (including boat dock, boat basin and roads) to the amount of the then current full insurable replacement value of the Open Spaces (including boat dock, boat basin and roads) as established by such appraisal.
- g. Comprehensive public liability and property damage insurance shall be in such limits as the Board of Directors shall deem desirable provided that such limit shall not be less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage, insuring the Declarant, the Association, the members of the Board of Directors, and their respective agents and employees, and the Lot Owners, from any liability to the public or to the Lot Owners, their tenants or invites, relating in any way to the ownership and/or use of the Open Spaces (including boat dock, boat basin and roads) or any part thereof.
- h. The Association may obtain such other forms of insurance as the Board of Directors shall elect to effect including Board of Directors and officers liability insurance and such Worker's Compensation insurance as may be necessary to comply with applicable laws.
- i. The Association may obtain a fidelity bond or bonds or insurance to protect against dishonest acts on the part of the members of the Board of Directors, officers, agents, employees, volunteers and all others who handle, or are responsible for handling funds of the Association. Such bond or bonds or insurance shall name the Association as an obligee or insured and shall be in an amount equal to One Hundred Fifty (150%) percent of the then current Common Expense budget or such higher amount as the Board of Directors deems appropriate. Such bond, bonds or insurance



shall contain a waiver of defense based upon the exclusion of persons who serve without compensation from the definition of "employee" or other appropriate provision to assure coverage of such person.

- j. Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Association, fees and expenses of the insurance trustee, if any, and the cost of any appraisal which the Board of Directors deems advisable in connection with any insurance, shall be Common Expense.
- k. The Association shall use its best efforts to secure policies providing that the policies cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Lot Owners or any officer or employee of the Association without a prior demand in writing that the Association cure the defect and without a reasonable period of time thereafter in which to cure the same.

#### **ARTICLE 10 LIMITED LIABILITY AND INDEMNIFICATION**

##### **Section 10.1 LIMITED LIABILITY OF THE BOARD OF DIRECTORS**

The Board of Directors, and its members in their capacity as members, officers and employees:

- a. Shall not be liable for the failure of any service to be obtained by the Association and paid for by the Association, or for injury or damage to persons or property caused by the elements or by another Lot Owner or person on the Real Estate, unless each such instance, such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Board of Directors.
- b. Shall not be liable to the Lot Owners as a result of the performance of the members of the Board of Directors' duties for any mistake of judgment, negligence or otherwise, except for the members of the Board of Directors' willful misconduct or gross negligence.
- c. Shall have no personal liability in contract to a Lot Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Board of Directors or the Association in the performance of the duties of the members of the Board of Directors.
- d. Shall not be liable to a Lot Owner, or such Lot Owner's tenants, employees, agents, customers or guest, for loss or damage caused by theft of or damage to personal property left by such Lot Owner or his tenants, employees, agents, customers or guests in a Lot, or in or on the Open Spaces (including boat dock, boat basin and roads), except for the members of the Board of Directors' own willful misconduct or gross negligence.



- e. Shall have no personal liability in tort to a Lot Owner or any other person or entity, director imputed, by virtue of acts performed by or for them, except for the members of the Board of Directors own willful misconduct or gross negligence in the performance of their duties.
- f. Shall have no personal liability arising out of the use, misuse or condition of any Building or the Open Spaces (including boat dock, boat basin, and roads) or which might in any other way be assessed against or imputed to the members of the Board of Directors as a result of or by virtue of their performance of their duties, except for the members of the Board of Directors own willful misconduct or gross negligence.

**Section 10.2 NOTICE OF COMPLAINTS;**

Complaints brought against the Association, the Board of Directors or the officers, employees or agents thereof in their respective capacities as such, shall be directed to the Board of Directors of the Association, which shall promptly give written notice thereof to the Lot Owners and such complaints shall be defended by the Association. The Lot Owners and the holders of mortgages on Lots shall have no rights to participate in such defense other than through the Association.

**Section 10.3 INDEMNIFICATION AGAINST THIRD PARTY ACTIONS**

The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Board of Directors of Association) by reason of the fact that he is or was a member of the Board of Directors, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by an adverse judgment, order, or settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful.

**Section 10.4 INDEMNIFICATION AGAINST ASSOCIATION ACTION:**

The Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal administrative or investigative, by or in the right of the Board of Directors or the Association, by reason of the fact that he is or was a member of the Board of Directors, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, trustee, officer,



employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

**Section 10.5 DETERMINATION:**

To the extent that a member of the Board of Directors, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 10.3 or 10.4 hereof, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Section 10.3 or 10.4 hereof shall be made by the Association only upon a determination that indemnification of the Board of Directors member, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Section 10.3 or 10.4 hereof. Such determination shall be made either (i) by the Board of Directors by a majority vote of a quorum consisting of all members who were not parties to such action, suit, or proceeding, or (ii) by independent legal counsel in a written opinion, or (iii) by the Lot Owners by the affirmative vote of a majority of the Lot Owners at any meeting duly called for such purpose.

**Section 10.6 ADVANCES:**

Expenses incurred in defending a civil or criminal action, suit or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon a majority vote of the Board of Directors and upon receipt of an undertaking by or on behalf of the Board of Directors member, officer, employee, or agent to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article.

**Section 10.7 SCOPE OF INDEMNIFICATION:**

The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, By-Laws, agreements, vote of disinterested Lot Owners or members of the Board of Directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this Article shall apply to all present and future members of the Board of Directors, officers, employees, and agents of the Association, and shall continue as to a person who has ceased to be a member of the Board of Directors or an officer, employee or agent, shall inure to the benefit of the heirs and personal representatives of all such Persons and shall be in addition to all other rights which such Person may be entitled as a

matter of law.

**Section 10.8 INSURANCE:**

The Association may purchase and maintain insurance on behalf of any person who was or is a member of the Board of Directors, officer, employee, or agent of the Association, or who was or is serving at the request of the Association as a trustee, director, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit), against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of North Carolina, as the same may be hereafter amended or modified.

**Section 10.9 PAYMENTS AND PREMIUMS:**

All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute expenses of the Association and shall be Common Expense.

**ARTICLE 11 EFFECT AND ENFORCEMENT**

**Section 11.1 RESERVATIONS AND RESTRICTIONS TO RUN WITH LAND:**

All of the covenants, conditions, restrictions, reservations, and servitudes set forth herein shall run with the land and each Lot Owner, by accepting a deed to any Lot, accepts the same subject to such covenants, restrictions, reservations, and servitudes and agrees for himself, his heirs, administrators, and assigns to be bound by each of such covenants, conditions, restrictions, reservations, and servitudes jointly, separately, and severally.

**Section 11.2 REMEDIES FOR VIOLATIONS:**

For a violation or a breach of any of these covenants, conditions, reservations and restrictions by any person claiming by, through, or under the Declarant, or by virtue of any judicial proceedings, the Declarant, and the Lot Owners, or any of them severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing right, the Declarant shall have the right, whenever there shall have been built on any Lot any structure which is in violation of these restrictions, to enter upon the Lot where such violation of these covenants, conditions, reservations and restrictions exists and summarily abate or remove the same at the expense of the owner, and any such entry and abatement or removal shall not be deemed a trespass.

- a. Should the Declarant or any Lot Owner employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions, or reentry, by reason of such breach, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the Owner and the reversionary owner shall have a lien upon such Lot or Lots to secure payment of all such accounts.

- b. Should the owner fail, neglect, or refuse to satisfy and discharge any lien arising hereunder within thirty (30) days, the Declarant or Lot Owner in whose favor said lien has arisen, their respective heirs, successors and assigns, shall have the right to interest on such liens at the rate of eight (8%) percent per annum and shall be entitled to receive all costs of collection, including a reasonable attorney's fee.
- c. The breach of any of the foregoing covenants, conditions, reservations or restrictions, shall not defeat or render invalid the lien on any mortgage made in good faith for value as to any Lot of Lots or portions of Lots, but these covenants, conditions, reservations, and restrictions shall be binding upon the effective against any such mortgagee or owner thereof, whose title thereto or whose grantor's title is or was acquired by foreclosure, or otherwise.
- d. No delay or omission on the part of the Declarant or the Lot Owners in the Real Estate in exercising any rights, power, or remedy herein provided, in the event of any breach of the covenants, conditions, reservations, or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Declarant for or on account of its failure to bring any action on account of any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions herein which may be unenforceable by the Declarant.

**Section 11.3 SEVERABILITY:**

Each and every of the covenants, restrictions, reservations, and servitudes contained herein shall be considered to be an independent and separate covenant and agreement and in the event anyone or more of the foregoing covenants, conditions, reservations, or restrictions shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions, reservations, and restrictions not so declared to be void, but all of the remaining covenants, conditions, reservations and restrictions not so expressly held to be void shall continue unimpaired and in full force and effect.

**Section 11.4 RULE AGAINST PERPETUITIES:**

In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such terms shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of North Carolina.

**Section 11.5 PUBLIC RIGHTS:**

The Real Estate shall be subject to any and all rights and privileges which the Town of Manteo, County of Dare or the State of North Carolina, may have acquired through dedication or the filing or recording of maps or plats of such premises, as authorized by law, and provided further, that no covenants, conditions, reservations, or restrictions, or acts performed shall be in conflict with any Town or County Zoning Ordinance or Law.

## **ARTICLE 12 DURATION OF COVENANTS, RESTRICTIONS, RESERVATIONS AND SERVITUDES**

### **Section 12.1 DURATION:**

All of the foregoing covenants, conditions, reservations, and restrictions shall continue and remain in full force and effect at all times as against the owner of any lot in such premises, regardless of how he acquired title, until the commencement of the calendar year 2020, on which date these covenants, conditions, reservations, and restrictions shall terminate and end, and thereafter be of no further legal or equitable effect on the Real Estate or any Lot Owner; provided, however, that these covenants, conditions, reservations, and restrictions shall be automatically extended for a period of Ten (10) years, and thereafter in successive ten-year periods, unless on or before the end of one of such extension periods or the base period the Lot Owners of a two-thirds majority of the Lots in the Real Estate shall by written instruments duly recorded declare a termination of the same. Although these covenants, conditions, reservations, and restrictions may expire as herein provided, any and all reversions for breach of these covenants, conditions, reservations, or restrictions committed or suffered prior to such expiration shall be absolute.

## **ARTICLE 13 AMENDMENT OF DECLARATION**

### **Section 13.1 AMENDMENT GENERALLY:**

This Declaration may be amended only in accordance with the express provisions of this Declaration.

### **Section 13.2 AMENDMENT BY LOT OWNERS:**

This Declaration may be amended by affirmative vote of Two-Thirds (2/3) of all Lot Owners (including Lots owned by Declarant), pursuant to procedures applicable to voting by members of the Association as set forth in its By-Laws.

### **Section 13.3 RIGHTS OF DECLARANT:**

Notwithstanding any provision herein contained to the contrary, no change, modification or amendment which affects the rights, privileges or obligations of the Declarant shall be effective without the prior written consent of the Declarant.

### **Section 13.4 OTHER AMENDMENTS:**

If any amendment is necessary in the judgment of the Declarant to cure any ambiguity or to correct or supplement any provision of this Declaration or the Plats which is defective or inconsistent with any other provision hereof or thereof, or to change, correct or supplement anything appearing or failing to appear in the Plats which is incorrect, defective or similarly inconsistent, the Declarant may, at any time and from time to time effect such amendment without the approval of the Lot Owners or their Mortgagees. Each such amendment shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, execution and acknowledgment by one or more officers of the Declarant.





IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal, or if corporate, has caused this Instrument to be signed in its corporate name by its duly authorized officers by authority of its Board of Directors, and as voted and approved by a two-thirds majority of the homeowners in the Heritage Point Homeowners Association at the annual meeting of said Association, the day and year first above written.

Heritage Point Homeowners Association

By: John Buzilow  
John Buzilow, President

STATE OF NORTH CAROLINA, COUNTY OF TYRRELL

I, Penny C. Beasley, a Notary Public of the County and State aforesaid, do hereby certify that **John Buzilow, President of the Heritage Point Homeowners Association**, personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the 29th day of December, 2009.

(SEAL)

PENNY C. BEASLEY  
NOTARY PUBLIC  
TYRRELL COUNTY, N.C.

Penny C. Beasley  
Notary Public  
My commission expires: 12-10-14

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