

NORTH CAROLINA
DARE COUNTY

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT made and entered into this the ___ day of August, 2007 by and between Hatteras Village Civic Association, Inc. ("HVCA") and the County of Dare ("County").

WITNESSETH

WHEREAS, HVCA owns certain property located in Hatteras Village; and

WHEREAS, the aforesaid property is used by County as a library and a portion by HVCA for civic purposes; and

WHEREAS, the parties hereto have entered into a long term lease authorizing County to use 3016 square feet of the finished space and 1144 square feet of the storage and work space on the second floor of the premises and allowing HVCA to use the remainder of the premises; and

WHEREAS, HVCA has obtained a quote of \$1,052,130.00 for certain improvements to the property; and

WHEREAS, County in consideration of the long term lease referenced above, has agreed to expend up to \$737,545.00 towards the cost of the said improvements on the library portion of the project.

NOW, THEREFORE, in consideration of the terms and conditions contained herein the parties agree as follows:

1. HVCA will enter a design-build contract for the improvements to the HVCA/library property located in Hatteras Village. Such improvements shall be pursuant to the plans and specifications attached hereto as Exhibit "A".
2. County shall pay \$737,545.00 towards the cost of said improvements for the library portion of the project together with the costs set forth in any change orders made by County to the library portion of the building.. All other costs and expenses associated with the project shall be the responsibility of HVCA.
3. County will make progress payments for its portion of the construction proceeds based upon the contractor's application for payment from HVCA. Each application for payment shall be accompanied by a sales and use tax statement for the

contractor used by HVCA for the filing of sales tax refunds from the NC Dept. of Revenue.

4. County shall have the right to have its staff or its own architect/contractor to inspect the progress and quality of work and to withhold payment if the percentage of completion of the work is not equal to or in excess of the total of the funds paid plus the sums requested, or if the quality of the work does not meet the terms and specifications of the contract between HVCA and the contractor.

5. Upon receipt of a pay request from contractor, County shall only be required to pay such sums as are approved by County's architect/contractor.

6. Dare County in conjunction with the EARL Library directors shall have the final approval of the design of and finishes for the library portion of the facility.

WITNESS our hands and seals the day and year first above written.

Hatteras Village Civic Association, Inc.

_____(SEAL)
President

County of Dare

_____(SEAL)
Chairman

Attest: _____
Clerk

NORTH CAROLINA

DARE COUNTY

THIS LEASE, made and entered into this ___ day of _____, 2007 by and between Hatteras Village Civic Association, Inc. (hereinafter "Landlord") and County of Dare, (hereinafter "Tenant");

WITNESSETH:

For and in consideration of the mutual terms and conditions contained herein Landlord hereby leases and demises unto Tenant, and Tenant hereby rents and leases from Landlord the Leased Premises herein described upon the following terms and conditions:

1. **Leased Premises.** The Leased Premises shall consist of 3016 square feet of the finished space and an additional 1144 square feet of second floor storage and work space, each in the structure located on that lot or parcel of land located in Hatteras Village, Dare County, North Carolina, and being known as: Hatteras Community Building and The Hatteras Library, said premises being more particularly described in the plans and specification attached to a Memorandum of Understanding of even date concerning certain improvements to be made to the structure.
2. **Fixtures and Equipment.** In addition to the Leased Premises described above, Landlord shall let and lease unto Tenant all appliances, fixtures and equipment located within the leased premises.
3. **Term.** The term of this Lease shall be for a term of twenty years and at the expiration of the initial term shall automatically renew for an additional twenty year term unless terminated by

Tenant. Thereafter this lease shall renew for additional five year terms. This lease may be terminated by either party at the end of the second twenty year terms or at the end of any of the five year terms upon 90 days written notice from the party seeking termination to the other.

4. **Rental.** Tenant is making substantial improvements to the property and such improvements shall be made in lieu of rent.

5. **Taxes.** There are no ad valorem taxes upon the property.

6. **Utilities.** Landlord shall be responsible for and pay all utility costs associated with the leased premises, including but not limited to water, sewer, and electricity.

7. **Insurance.** Landlord shall keep and maintain a policy of liability insurance with aggregate coverage of not less than \$1,000,000.00 and shall indemnify and hold harmless Tenant from any loss or damages resulting from personal injury or death which may occur upon the leased premises. Landlord shall keep in effect a fire, wind, hail, and extended coverage insurance policy or policies upon the building and improvements upon the premises, together with flood insurance if the property is located in a flood zone in which commercial lenders require flood insurance coverage. The amount of coverage for such policies of insurance shall be in an amount equal to the value of the improvements. Tenant shall obtain its own insurance coverage upon its personal property and contents of the library portion of the premises.

8. **Repairs and Maintenance.** Landlord shall keep the demised premises in clean and sanitary condition and will keep and maintain all portions of the Leased Premises, including, but not limited to, the plumbing, electrical systems, septic system, HVAC, fixtures, painted surfaces, equipment, fixtures, windows, doors, glass, roofs, grounds and all structures and improvements from time to time located therein in as good of repair as they are now in.

Tenant shall have no maintenance responsibilities or costs. Landlord shall clean and provide housekeeping functions for the portion of the premises occupied by Landlord and Tenant shall clean and provide housekeeping functions for the portion of the premises occupied by Tenant.

9. **Improvements and Alterations.** Tenant may not make structural improvements or structural alterations to the Leased Premises without the consent of the Landlord. If such structural improvements are made, they shall become a part of the leased premises and shall be the property Landlord upon termination of this lease without cost to or reimbursement from Landlord.

10. **Use of the Premises.** Tenant shall be allowed to use the premises for any lawful purposes. In no event shall Tenant store any hazardous waste upon the premises or engage in any unlawful activities.

11. **Default.** Breach of any covenant or condition of this Lease shall be deemed a default by Tenant under this Lease. However, a default as to a matter capable of being cured shall be deemed waived if Tenant, in good faith commences performance required to cure the same within 10 days after receipt of written notice and thereafter continuously and with reasonable diligence proceeds to complete the performance required to cure such default. Tenant shall be deemed in default if Tenant during the term of this Lease should be adjudged bankrupt or insolvent by any Court of competent jurisdiction, a receiver shall be appointed for substantially all of Tenant's assets, or tenant shall fail to comply with any other condition of this lease. Upon default Landlord may, at Landlord's option terminate this Lease and may exercise all remedies available at law or in equity, such remedies are to be cumulative. Tenant shall remain liable for all Tenants' obligations under this Lease and for such loss and damages as Landlord may sustain as a result of Tenant's breach hereof, including reasonable attorney's fees, subject to Landlord's duty to mitigate damages.

12. **Holdovers.** If Tenant shall continue possession after the end of the term of this Lease and such holdover is with the permission of the Landlord, the terms of this Lease shall continue to apply with the exception that the tenancy thus created may be terminated by either party by giving the other party not less than 30 days written notice of the date in which they intend to terminate this Lease.

13. **Notices.** All notices required to be given hereunder shall be by mailing, registered or certified mail, a letter addressed to the Landlord or the Tenant at the address specified below. Either of the parties may change this address by written notice to the other.

Landlord's address is: Hatteras Village Civic Association
PO Box 457
Hatteras, NC 27943

Tenant's address is: County of Dare
Attention: County Manager
PO Box 1000
Manteo, NC 27954

14. **Sublease.** Tenant shall not be permitted to sublease any or all of the demised premises without Landlord's prior written consent.

15. **Fire or Other Casualty.** In the event of a loss to the property by fire or any other casualty Tenant shall have the option to repair the premises at its expense and continue the lease in full force and effect. Landlord shall contribute all insurance proceeds received as a result of such loss to Tenant to apply to the cost of repair. Tenant shall also have the option to

elect not to make such repairs in which event this Lease shall terminate and the parties shall have no other and further obligations to the other.

16. **Inspection of the Premises.** Landlord shall have the right to inspect the premises at reasonable times during the term of this lease. Landlord shall give Tenant reasonable notice of his intention to make such an inspection.

17. **Quiet Enjoyment.** Subject to the other provisions of this Lease, Landlord covenants that Tenant shall be allowed to peaceably and quietly enjoy the Leased premises for the term of this Lease without hindrance or interruption by Landlord or any other person or entity claiming by or through Landlord.

18. **Warranties.** Landlord warrants that it is the owner of the Leased premises and has the right, title, interest, and authority to lease the premises unto Tenant.

19. **Entire Agreement.** This instrument contains the complete agreement of the parties regarding the terms and conditions of the lease of the demised premises and there are no oral or written conditions, terms or understandings or other agreements pertaining thereto which have not been incorporated herein.

IN WITNESS WHEREOF, parties have hereunto set their hands and seals the day and year first above written.

Landlord:

_____ (SEAL)

Tenant:

_____ (SEAL)

NORTH CAROLINA, DARE COUNTY

I, a Notary Public for the above named State and County do hereby certify that
_____ appeared before
me this day and acknowledged the execution of the foregoing instrument.
WITNESS my hand and notarial seal, this the ____ day of _____, 2007.

My commission expires:

(NOTARIAL SEAL)

Notary Public

NORTH CAROLINA, DARE COUNTY

I, a Notary Public for the above named State and County do hereby certify that _____ appeared before me this day and acknowledged the execution of the foregoing instrument.
WITNESS my hand and notarial seal, this the ____ day of _____, 2007.

My commission expires:

Notary Public

(NOTARIAL SEAL)