

Karen S. Hardesty

Carteret County, NC

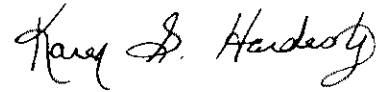
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*White & Allen, P.A., 304 North 35<sup>th</sup> Street Morehead City, NC 28557*

***THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS***

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

**DECLARATION OF COVENANTS AND RESTRICTIONS  
SHOWBOAT COTTAGES, a Townhouse Development**

***THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS***

THIS DECLARATION, dated for reference only this the 11<sup>th</sup> day of January, 2024, by **BALLOU-LEWIS PROPERTIES, LLC**, a North Carolina corporation, whose mailing address is PO Box 662, Greenville, NC 27835, (hereinafter referred to as "Declarant");

**WITNESSETH:**

Declarant is the owner of certain property located in Atlantic Beach, North Carolina more particularly described in Paragraph 2.1 herein which it has developed as a townhouse residential community. Developer desires to provide for the preservation of the values and amenities for such use and for the maintenance of common areas; and, to this end, desires to subject said property, together with such additions as may hereafter be made thereto, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property, Declarant and each subsequent owner thereof. Declarant deems it desirable for the efficient preservation of such values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created. To this end, Declarant has incorporated or will incorporate within one (1) month of recording of this declaration under the laws of the State of North Carolina, as a nonprofit corporation, Showboat Cottages Owners' Association, Inc., (the "Association"), for the purpose of exercising the functions aforesaid;

NOW THEREFORE, Declarant declares that the real property described in Paragraph 2.1 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

## ARTICLE I DEFINITIONS

1.1 The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- a. "Association" shall mean and refer to Showboat Cottages Owners' Association, Inc.;
- b. "Common Element" shall mean and refer to those areas of land (i) shown on the Plat and Plans as "Common Area" or "Open Space", excluding Lots or Living Units, which have been or are hereafter deeded to the Association and intended to be devoted to the common use and enjoyment of the Owners of Lots;
- c. "Common Expenses" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserve, all as provided for in the Declaration.
- d. "Declarant Control Period" shall mean that period of time measured from the date of the recording of this Declaration with the Carteret County Register of Deeds continuing therefrom until December 31, 2033 or upon sale of the final lot to a 3<sup>rd</sup> party, whichever occurs first;
- e. "Development" shall mean and refer to the Lots and Common Elements subject to the terms of this Declaration;
- f. "Limited Common Elements" shall mean those portions of the Common Elements allocated within this Declaration for the exclusive use of one but fewer than all of the Lots, specifically including HVAC systems, septic systems, docks and piers, utilities, and driveways serving a particular Lot which are located within the Common Elements, even if not identified as "limited common elements" on the plat; The Association is responsible for landscape maintenance of those areas identified as "limited common", except for docks and piers.
- g. "Living Unit" shall mean and refer to any portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family, whether Owners or tenants.
- h. "Lot" shall mean and refer to the lots shown as such on the Plat and Plans and specifically exclude the Common Elements as heretofore defined;
- i. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Paragraph 3.1, hereof;
- j. "Occupant" shall mean any person or persons in possession of a Living Unit, including Owners, the family members, lessees, guests, and invitees of such person or persons, and family members, lessees, guests and invitees.

k. "Owner" shall mean and refer to any person or entity who is the record owner of a fee or undivided fee interest in a Lot or Living Unit. A tenant or lessee shall not be considered an "Owner".

l. "Person" shall mean a natural person, corporation, limited liability company, partnership, trust or other legal entity, including any combination thereof.

m. "Plat and Plans" shall mean that plat and plans showing the sixteen townhouse Lots shown on that map entitled "SHOWBOAT COTTAGES DUPLEX LOTS 614 A/B ... THRU 712 A/B", dated 02/03/23 by The Cullipher Group, P.A. and recorded in File # 34614 (Map Book 34, Page 614), Carteret County Registry (hereinafter "Plat").

n. "Properties" shall mean and refer to the real property described in Article II made subject to this Declaration;

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION;  
ADDITIONS THERETO

*The following property shall be submitted to North Carolina General Statutes 47F (The Planned Unit Development Act) hereinafter the "Act", and the terms, rights, responsibilities and regulations of said Act shall be incorporated into this Declaration by reference, except as modified herein.*

2.1 **Properties.** The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to

That certain real property located in the Town of Atlantic Beach, Carteret County, North Carolina, shown as "SHOWBOAT COTTAGES DUPLEX LOTS 614 A/B THRU 712 A/B", dated 02/03/23 by The Cullipher Group, P.A. and recorded in File # 34614 (Map Book 34, Page 614), Carteret County Registry (hereinafter "Plat").

The entire townhouse project consists of 16 townhouse lots and 8 buildings built or proposed to be built on the lots, with each building setting on two lots and having two units, identified as "A" and "B". The townhouse Lot numbers correspond to the street address of each unit as assigned by the Town of Atlantic Beach. (hereinafter "Lots"), subject to the covenants, conditions, easements and restrictions herein set forth and which are for the benefit of, binding upon and shall run with the land, and are for the benefit of Declarant, the Association and the Owners, their heirs, personal representatives, successors and assigns, as well as any other property made subject to this Declaration under Article XI below;

2.2 **Description of Townhomes.** All Townhomes will be basically the same size. The development is proposed to be 8 buildings of 2 townhome cottages each. 14 cottages will have 3 bedrooms, a bonus room and 4.5 baths. 2 cottages will have 2 bedrooms, 2 bonus rooms and 4.5 baths. These configurations are subject to change prior to being completed.

2.3 **Townhome Boundaries.** The boundaries of each Townhome lot shall be as shown on the recorded plat or plats; provided that the side boundary of each Townhome shall be a line consistent with and along the center of all firewalls separating a Townhome from another Townhome. In the event of any discrepancy between the boundaries of a Townhome, as described herein and the

boundaries of such Townhome when shown on the recorded plats, the description of the boundaries of the Townhome set forth herein shall control. All of the area within the boundaries of each of the Townhomes, as herein described, shall for all purposes constitute real property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easement and restrictions of this Declaration.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

**3.1 Association.** To efficiently and effectively provide for the administration of the Properties by the Owners of the Lots, an association of all Owners has been organized pursuant to Chapter 55A of the General Statutes of North Carolina known and designated as "SHOWBOAT COTTAGES OWNERS' ASSOCIATION, INC.," and the Association shall administer the operation and management of the Properties and undertake and perform all acts and duties incident thereto in accordance with this Declaration.

**3.2 Powers.** In the administration of the operation and management of the Properties, the Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, to adopt, promulgate and enforce such rules and regulations governing the use of the Common Elements as the Board may deem to be in the best interests of the Association and to exercise all powers set forth in N.C.G.S. §47F-3-102, including the specific power to assign its rights to future income and to receive Common Expense assessments as provided in N.C.G.S. §47F-3-102(a)(15).

**3.3 Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by this Declaration to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member.

**3.4 Voting Rights.** The Association shall have two classes of voting membership.

**Class A.** Class A Members will be all Owners, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any Lot all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine but in no event shall more than one vote be cast with respect to any such Lot.

**Class B.** The Class B Member will be the Declarant. The Class B Member shall be entitled to fifteen (15) votes for each Lot owned by the Declarant. The Class B membership shall cease and become converted to Class A membership at the earlier occurrence of the following events: (a) when the total votes outstanding in Class A membership exceed the total votes outstanding in Class B membership; but provided that the Class "B" membership shall be reinstated if thereafter, and before January 1, 2053 additional lands are annexed to the Property in accordance with this Declaration; (b) on January 1, 2053 or (c) such earlier date as the Declarant may choose to terminate the Class B Membership upon notice to the Association. From and after the happening of these events, whichever occurs earlier, the Class B Member will be deemed to be a Class A Member entitled to one vote for each Lot in which it holds the interests required for membership.

3.5 **Board of Directors.** The Association shall be governed by a Board of Directors. Subject to written waiver by Declarant or until Declarant's Class B membership is converted to Class A membership, Declarant shall appoint a majority of the members of the Board. As long as Declarant has the right to appoint a majority of the members of the Board, the Board shall consist of at least three (3) members. Declarant's appointees need not be members of the Association. Upon the conversion of the Declarant's membership interest into Class A membership, the Board will thereafter be selected in accordance with the Bylaws of the Association. All power and authority of the Association is exercisable by the Board of Directors.

Declarant may voluntarily surrender the right to appoint and remove members of the Board of Directors and Officers of the Association before the termination of such right as provided above, but in such event Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board of Directors, as described in an instrument signed by the Declarant and recorded with the Register of Deeds of Carteret County, North Carolina, be approved by the Declarant before becoming effective.

3.6 **Bylaws.** The Bylaws of the Association may be amended as set forth therein. In the event any provision of the Bylaws is inconsistent with the provisions of this Declaration, the provisions of this Declaration shall control. A copy of the Bylaws and filed Articles of Incorporation are attached as Exhibit A.

3.7 **Powers of the Declarant on Behalf of the Association to Enter into Management and Other Utility Provider Agreements.** The Declarant, on behalf of the Association, has the right to subject the Lots to utility agreements and or contracts for internet, cable television, sewer system maintenance and landscaping maintenance for the individual lots and common areas for a reasonable term of years from the date of recording of this Declaration, so long as the Declarant does not substantially financially benefit from the contract and it is in the best interest of the Association and its members at the time of execution of the contract. Any fees for such utility services may be a part of the regular Association assessment, whether such lot owners utilize the utility service or not.

#### ARTICLE IV PROPERTY RIGHTS IN THE COMMON ELEMENTS

4.1 **Members' Easements of Enjoyment.** Subject to the provisions of Section 4.3 below, every Member shall have a right and easement of enjoyment in and to the Common Elements, including rights of access, ingress and egress to and from public streets and walkways and the right to park a motor vehicle in areas specifically designated for such purposes; such easement shall be appurtenant to and shall pass with the title to every Lot. In addition, Members shall have the right and privilege of using the designated parking spaces for the benefit of his or her Lot as more particularly specified in Paragraph 4.3.

Members may delegate this easement of enjoyment to members of their family, tenants, contract purchasers who reside on the property or in the case of the Member being a partnership, limited liability company, or corporation use may be delegated to the partners, members or shareholders as the case may be; however, such delegations of use shall be subject to regulation as to time and conduct by the Association.

4.2 **Title to Common Elements.** The record title to the Common Elements shall be vested with and held by the Association. Declarant agrees that all of the Common Area owned by Declarant shall be conveyed or assigned to the Association, subject to covenants, easements, restrictions and other matters of record, on or before ninety (90) days following the conveyance of the last Lot owned by Declarant. Upon recordation of the deed conveying Common Area to the Association, the Association shall be conclusively presumed to have accepted the conveyance.

4.3 **Parking.** As an Owner of a Lot, such person or entity is entitled to park and use the "concrete drive" adjacent to their Lot. No boats, trailers, campers, motorhomes, trucks over one and one-half (1 1/2) tons, service vehicles, tractors or other similar vehicles (excluding automobiles, bicycles and motorcycles) shall be parked anywhere within the Properties unless otherwise permitted. It is not anticipated that there will be any areas to park recreational vehicles on the project, however should conditions change, the Association may at their discretion designate certain areas for recreation vehicles to be stored and if designated each owner will be notified of such location.

Any vehicle located on the Properties must be operational and have a current registration and inspection. No portion of the Properties shall be used for performing repair work on a vehicle of any type, except such emergency repairs such as repairing or replacing a flat tire.

4.4 **Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

a. The right of the Association, in accordance with the North Carolina Non-Profit Corporation, to borrow money for the purpose of improving the Common Elements and in aid thereof to mortgage said properties.

b. The rights of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure;

c. The right of the Association, to suspend the voting rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;

d. The legal right of an Owner of property shown on the same plat to include portions of the Common Elements as may be necessary for said Owner to qualify under governmental requirements such as setback lines, open space, parking or other aspects which may be needed for issuance of a building permit to be secured to rebuild a damaged Living Unit; and

e. The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or entity for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless such an instrument is approved by a majority of the members attending in person or by proxy a meeting called for such purpose. Written notice of the meeting along with the proposed agreement and action thereunder must be sent to every Member at least thirty (30) days in advance of any action taken.

f. The right of the Association to designate parking spaces within the Common Elements for the exclusive use of each Living Unit, all as more particularly set out in Paragraph 4.3 above.

g. The right of the Association to adopt, modify, change, amend rules and regulations regarding the use of the Common Elements from time to time including the right to prescribe reasonable rules and regulations governing the use of the Common Elements, which rules and regulations shall apply equally to all Owners, their family members, guests, lessees and invitees. Any violation of such rules may, after a hearing in front of the Board of Directors or adjudicatory panel, be punishable by a fine not to exceed \$100.00 per violation, suspension of voting rights and or suspension of rights to use the Common Elements all as set forth in N.C.G.S. §47F-3-107.1.;

h. The right of the Association to adopt, modify, change and amend rules and regulations regarding the suspension of the rights of any Owner as to (i) casting votes as a Member of the Association, and (ii) the use and enjoyment of the Common Elements for failure to pay assessments levied in accordance with Article V below. In no event, may a suspension exceed the date on which such past due assessments are paid.

**4.5 Easements Upon the Common/Limited Common Area:** The common property shall be subject to existing utility easements, including sewer, septic tank areas identified on the plat, waterline and access easements and those easements described on the Plat including Stormwater Easements that may benefit adjoining properties.

There is specifically reserved an easement for Lot owners to cross common and limited common elements for access to their assigned boat slip. This easement shall include reasonable access rights to perform maintenance on the docks and slips as needed.

**4.6 Maintenance of Common Area, including limited common areas.** The Association shall keep in good condition, order and repair, the Common Area, including but not limited to any portion of a private street located in the common area, sidewalks, curbing, yards and landscaping adjacent to lots, all entry features and entry landscaping, if any, all street signage and street lights, bulkheads (but not adjacent docks that are limited common elements), floating docks and ramp as designated on the Plat, septic tanks and their related lines and mechanical systems serving the townhomes, and any stormwater control features. In the event that the Association determines that any maintenance which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owners, or the occupant, family member, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed against the Owner as a specific assessment.

**4.7 Limited Common Elements.** The plat identifies areas as “common area” between the rear line of all Lots and the adjacent waters of Bogue Sound and the Causeway Channel. Each lot owner shall be entitled to use of this area as limited common area adjacent to its lot to the exclusion of the other lot owners, except for the easements created herein for utilities and access to joint docks. The Association shall be responsible for the lawn maintenance of such limited common areas, except for those areas that may be fenced off as allowed by the Association, and Lot owners shall provide reasonable access to perform such maintenance on the limited common areas.

Areas at any time and from time to time, including the adding or modifying of landscaping improvements.

**4.8 Septic Tank and System Easements.** Each two-unit building shall have two tanks per duplex, septic tank and pump tank then echoflow treatment pods to service the two units and they are located with the common area. The septic tanks are specifically identified as limited common elements, but the maintenance and upkeep of such shall be a common expense of the Association. The aforesaid portion of the wastewater disposal system easement is hereby restricted, as to use (until termination as hereinafter provided), for disposal system and lines to service ground dispersal waste treatment system to service the above reference Lots. These easements shall include all rights of ingress and egress, system installation, operation, maintenance, monitoring and repairs as may be required by the Carteret County Health Department.

In the event, that public or private sewer shall become available to the property which is subject to this easement, the owner's rights and easements hereunder shall terminate upon connection to a public or private sewer system. Until the septic system is abandoned and the units are connected to public sewer, the responsibility for maintenance and upkeep of the septic system shall be upon the unit owners whose unit the systems serves.

From an after the date of recordation of this easement and until termination as above provided for, the Association shall be responsible for any ad valorem taxes attributable to the easement area located on the common property of the Association.

## ARTICLE V COVENANT FOR ASSESSMENTS

**5.1 *Creation of the Lien and Personal Obligation of Assessment.*** Except as hereinafter specifically provided, each Owner of a Lot, by the acceptance of title thereto, shall be deemed to covenant and agree to pay to the Association assessments as outlined in this Declaration of Covenants and Restrictions. The assessments may be classified as (A) Regular for (1) operation, maintenance, repair, replacement and improvement of Common Elements, (2) routine maintenance and repair or improvements to the exterior of the Living Unit of an Owner(s) and (3) other purposes, and (B) Special for (1) capital improvements to Common Elements, (2) routine maintenance and repair or improvements to the exterior of a Living Unit of an Owner(s) and (3) purchase and reconstruction of a Living Unit as provided in Article VI. These assessments are to be fixed, established and collected from time to time as hereinafter provided.

The Regular and Special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

**5.2 *Purpose of Assessment.*** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance (1) of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements and (2) of the Lots and Living Units situated upon the Properties. Without limitation, such uses shall include satisfaction of the Association's obligations regarding the Common Elements to pay



hazard and liability insurance, ad valorem taxes, the payment to governmental assessments for public and private capital improvements made to or for the benefit thereof, the repair, replacements and additions thereto, the maintenance and upkeep of any private road or access way and for the cost of labor, equipment, materials, management and supervision thereof.

**5.3 *Basis for Computing Assessments.*** The Board of Directors shall categorize the purposes for which it makes assessments so that each purpose will be one which is charged in the same amount to each Owner of a Lot.

**5.4 *Maximum Increase in Regular Assessment.*** The maximum increase in a regular assessment shall be no more than Fifteen Percent (15.00%) above the regular assessment for the previous year without a majority vote of the Members, by proxy or in person, at a meeting duly called for such purpose.

The Board of Directors may fix the annual regular assessment at an amount not in excess of the maximum.

**5.5 *Special Assessments for Capital Improvements.*** In addition to the annual assessments authorized by this document, the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of not less than two-thirds (2/3rds) of the Members entitled to vote thereon and in attendance, either in person or by proxy, at a meeting duly called for this purpose.

Pursuant to NCGS 47F-3-115 (c), incorporated herein by reference;

(1) Any common expense associated with the maintenance, repair, or replacement of a common or limited common element shall be assessed against the lots to which that limited common element is assigned, or against the lots that benefits from the assessment, equally, or in any other proportion that the Association shall deem appropriate;

(2) Any common expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefitted;

**5.6 *Change in Basis of Assessments.*** The Association may change the basis of the assessments fixed by Section 5.3 hereof prospectively for any such period, provided that any such change shall have the assent of not less than two-thirds (2/3rds) of the votes of the Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Member at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 5.3 hereof shall not apply to any change in the basis of the assessments undertaken as an incident to a merger of consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2.2, hereof.

**5.7 Quorum for Any Action.** Unless otherwise specifically provided herein, the quorum required for any action authorized by this Declaration shall be the presence at the meeting of Members, or of proxies, entitled to cast at least one-third of all the votes of the membership.

**5.8 Date of Commencement of Assessments; Due Dates.** The date of commencement of Assessments for these Lots shall be no later than 6 months after issuance of a final Certificate of Occupancy (CO) by the Town of Atlantic Beach for the completed townhouse unit built on the lot, or upon the conveyance to a third party after issuance of said CO, whichever occurs first, except as provided below to Declarant owned lots. The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each Regular Assessment Period. Written notice of the Regular Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Notwithstanding any provision of this Declaration to the contrary, during the Declarant Control Period the Lots and other portions of the Property owned by the Declarant shall not be subject to any annual or special assessment levied by the Association or to any lien for such assessment. During the Development Period, the Declarant shall pay the balance of the actual operating expenses of the Association remaining after the Association levies and collects assessments from Owners. The Declarant shall be obligated to fund such balance only as the expenses are actually incurred by the Association during the Development Period. Upon the termination of Declarant's agreement to pay operating deficits, the Declarant shall become obligated to pay assessments on Lots owned by it within the Property on the same basis as the Owner. In no event shall the Declarant be obligated to pay for the operating deficits of the Association after the Declarant no longer owns any Lots within the Property.

Notwithstanding anything to the contrary, at the first conveyance of any Lot by the Declarant, the grantee shall pay the Association the sum of \$2,000.00 for each Lot acquired as a contribution to the capital of the Association (the "Capital Contribution"). The Association may use the Capital Contribution or any part thereof for any purposes authorized for assessments by this Declaration. Additionally, at the first conveyance of any Lot by the Declarant, the grantee shall reimburse the Declarant for any prepaid insurance premiums with said sum being prorated based upon the remaining effective period of the policy.

**5.9 Duties of the Board of Directors.** The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Living Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

**5.10 Effect of Nonpayment of Assessment; Personal Obligation of the Owner; Liens; Remedies of the Association.** If the assessments are not paid on the date when due (being the dates specified in Section 5.8), then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, become a continuing lien against the Lot or Living Unit when filed of record in the Office of the Clerk of

Superior Court of Carteret County in the manner provided therefor under Chapter 47F of the General Statutes of North Carolina. The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A, Chapter 45 of the General Statutes of North Carolina. Such lien shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives and assigns. The personal obligations of the Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date or a written arrangement for payment consented to by the Association, the assessment shall bear interest from the date of delinquency at the rate of EIGHTEEN PERCENT (18.00%) PER ANNUM and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property (both actions may be pursued without constituting an election of remedies), and there shall be added to the amount of such assessment court costs and the Association's actual attorney's fees incurred in bringing the action to collect such assessment or in foreclosing on the lien. (If a court determines that such attorneys' fees are not permitted under the then-current law, the Association shall be permitted to recover the maximum reasonable attorneys' fee permitted under law.)

**5.11 *Acceleration of Assessments Payable by Installment.*** In any case where an assessment is payable in installments, upon a default by an Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Board, and the entire remaining balance of the assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Owner.

**5.12 *Subordination of the Lien to Mortgages.*** The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a deed of foreclosure under power of sale or any other transfer in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments which thereafter become due, nor from the lien of any such subsequent assessment.

**5.13 *Exempt Property.*** The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; and (b) all Common Elements as defined in Article I, Section 1.1, hereof.

**5.14 *Prohibition of Exemption From Liability For Contribution Toward Common Expenses.*** No Owner may exempt himself from liability for his share of the Common Expenses assessed by the Association by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Lot or otherwise.

**5.15 *Capital Reserves.*** The Board of the Association, in adopting its budget for the operation, management and maintenance of the Development, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Elements and for meeting its responsibilities for exterior maintenance set forth in Article VIII below, which capital improvement and replacement fund ("Capital Improvement Fund") shall be

for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a portion of the Common Elements, the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of the Owners of Lots, as well as, its maintenance and repair responsibilities under Article VIII hereof. The amount to be allocated to the Capital Improvement Fund may be established by the Board so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement, maintenance or repair. The amount so collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to the Common Elements. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board, be expended for current operations and maintenance.

## ARTICLE VI EXTERIOR MAINTENANCE AND PARTY WALLS

6.1 ***Exterior Maintenance.*** In addition to maintenance of the Common Elements, the Association shall provide exterior maintenance to each Townhome which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, porches, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefore), and other exterior improvements. Such exterior maintenance shall not include glass' surfaces, or screens for windows and doors, or any improvements contained within Patio Area, or the repair or reconstruction of any improvements on any Lot, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect.

As a matter of information to future members of this Association, the Declarant wishes to make it known that it may be a part of the original plan of development to construct a variety of dwellings with a variety of exteriors for the good of the entire subdivision. Some dwellings will require more maintenance than others because of the types of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those connected with the conception, design, construction and financing of this subdivision as originally planned, are in accord in their belief that all Members of the Association will be benefited by the variety of exteriors and, therefore, the Association should provide exterior maintenance and make a uniform rate of charge based on the type of unit located on a Lot without further regard to the actual cost of maintenance of each dwelling. Except as otherwise provided for in this Article, the Owner of each Lot and Living Unit shall keep his Lot and all improvements thereon (including the Living Unit), in good order and repair, if not covered by the association, including but not limited to: (i) keeping all sidewalks and patios neat, clean and in good repair, and (ii) the exterior care of the Living Unit and all other structures on the Lot, including but not limited to, windows, screens, sliding glass doors, decks, and patios; however, excluding such maintenance being the responsibility of the Association under this article, all in a manner and with such frequency as is consistent with good property management and maintenance.

If, in the opinion of the Board of Directors, any Owner fails to perform the duties imposed hereunder, the Association, after thirty (30) days written notice to the Owner to remedy the condition in question, and upon failure of the Owner to remedy the condition, the Association shall have the right (but not the obligation), through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot and the improvements or structures thereon (including Living Unit) and the cost thereof shall be a binding, personal obligation of such Owner, and an additional assessment upon the Lot collectible as provided for in Article V.

**6.2 *Damage by Owner.*** In the event that the need for maintenance or repair of a Lot or Living Unit is caused through the willful or negligent acts or omission to act of its owner, or his family, tenants, contract purchasers, guests or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, or other casualty as defined and explained in North Carolina standard fire and casualty with extended coverage policies, the obligation and costs of such maintenance and repair shall be on the Owner. In the event such damage does not otherwise fall under the responsibilities of the Association as set out herein, and the Owner fails to take action to commence such maintenance and repair, the Association may, upon providing the Owner with thirty (30) days written notice, commence such maintenance and repairs and charge the costs of the same to the Owner as part of the regular assessment to his Lot under this Article. In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, lessees, guests, contractors, or invitees, or contract purchasers, the cost of such maintenance or repairs shall be added to, and become a part of, the assessment to which such Lot is subject.

**6.3 *Inspection and Access Rights Reserved.*** In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association, its agents, employees or contractors, the right to unobstructed access over and upon each Lot at all reasonable times for inspection and to perform maintenance as provided in this Article after notice has been provided to the Owner. In the case of an emergency repairs, access will be permitted at any time with only such notice as under the circumstances is practical.

**6.4 *Common Party Walls.*** All common party walls between individual Townhomes shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between individual residences:

a. Each wall which is built as part of the original construction on a Lot which serves as the dividing line between two adjoining Lots or Townhomes shall constitute a common party wall and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. **PURSUANT TO TOWN BUILDING REGULATIONS, OWNERS SHALL NOT BE ALLOWED TO FINISH THE FOURTH FLOOR OF THE RESIDENCE (UNFINISHED ATTIC SPACE) OR MODIFY ITS CONDITION TO MAKE IT LIVABLE SPACE.**

b. The cost of reasonable maintenance of a common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion to such use. Provided, however, each Owner is responsible for usual and routine maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

c. If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common party wall or fence, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

d. Notwithstanding any other provision of this Section, an Owner of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

e. The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

f. Each Owner of a residence which shares a common party wall with one or more other residences and such Owner's contractors and subcontractors shall have an easement and right of entry upon such other residences to the extent reasonably necessary to repair, restore, maintain or reconstruct the common party wall or fence. Such repair, restoration, maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining residences damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

6.5 ***Weatherproofing.*** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

6.7 ***Easement and Right of Entry for Repair, Maintenance and Reconstruction and Planting.*** Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably possible.

**Plantings.** An Owner desiring to landscape around his Lot with plants and flowers shall submit a request plans for the same to the Association pursuant to Article VII and, if approved, shall maintain the same at his own expense. Any such plantings or maintenance shall be done in a manner which does not hinder the Association in the performance of any of its maintenance duties as to the Living Units or Common Elements and/or detracts from the exterior appearance of the Living Units. The decision as to whether such landscaping detracts from the exterior appearance of the Properties shall rest solely with the Board of Directors. If the Board of Directors determines that said planting is inappropriate, then in such event, the Owner shall remove such landscaping within thirty (30) days after receiving notice thereof.

If, in the opinion of the Board of Directors, any Owner is failing to maintain his Lot or approved plantings in a neat and orderly manner which continues after twenty (20) days written notice to the Owner from the Board of Directors, the Association may enter upon the Lot or Common Elements perform such maintenance as it deems necessary to put such area in a neat and orderly condition. The cost of such maintenance by the Association shall be charged to the Owner and shall constitute a lien against the Owner's Lot and be treated in the same manner as assessment liens under this Declaration.

**6.8 Certification with respect to Contribution.** If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request of the adjoining Owner or Owners in writing that they certify in writing that they have no right of contribution against such Owner, whereupon it shall be the duty of each adjoining Owner to make such certification within ten (10) days of such request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital as to the amount claimed and the basis therefor. Failure by any Owner to provide such certification within the time periods appearing above shall conclusively be deemed to have waived and released any right of contribution against such Owner or Lot.

**6.9 Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each lot owner agrees that the disputed matter be arbitrated as provided by Section 14.10 of this Declaration.

#### ARTICLE VII AESTHETICS COMMITTEE

**7.1 Review by Committee.** Unless otherwise provided herein, no building, fence, wall or other structure, nor any exterior improvement, replacement nor any planting or landscaping change (including removal of any tree) shall be commenced, erected or maintained upon the Properties nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an aesthetics committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been complied with fully. The Association shall have the right to bring an action to enjoin any activity taken in violation of this Article.

#### ARTICLE VIII BOAT DOCKS/PIERS/SLIPS

**8.1 Limited Common Areas (Boat Slips).** All Lots shall have as part of their Limited Common Elements (a/k/a Areas) the right to access, reconstruct and use a joint boat dock, slip and the dock space surrounding it. Such boat slips and the dock space surrounding them are illustrated on the plat and further identified and assigned to a particular Lot as shown on Exhibit B. Once constructed, such boat slips and surrounding dock area shall be appurtenant to the Lot(s) as limited common area and may be transferred with the Lot to the Owner's heirs, successors and assigns. The limited common docks are designated with numbers 1-18. A boat slip and

surrounding dock space may not be transferred separately from the Lot to which it is made appurtenant. A conveyance of a Lot that has a boat slip as a limited common element shall include the related boat slip, whether it is included in the deed description or not. The utilities, including water and power for Slips 1-16 are connected to their respective units and the cost of such utilities are part of the utility bill for the assigned unit.

Boat Slips 17 and 18 are limited common elements that may be assigned by the Declarant to a Lot owner of any lot and such assignment will happen in the deed of conveyance or separate assignment document to be recorded. No lot Owner may own more than two (2) slips or fewer than one (1) slip. No slip may be assigned to a non-owner as shown of record.

**Assignment of Boat Slips.** During the Declarant control period, Declarant may reallocate the boat slip assignments on any unsold lots, and after transfer of a Lot to an individual, the Owners shall have the right among themselves and from time to time to swap the Boat Slip assigned to their Lot with a Boat Slip assigned to another Lot. Such assignment must be in writing, signed by the owners of each Lot involved in the assignment. The assignment must address payment of utilities that may be furnished to the slip by the original unit the slip was assigned to. The Board of Directors may adopt a form assignment to be used for such transfers. The assignment shall be recorded with the Register of Deeds of Carteret County, North Carolina and a copy thereof shall be provided to the Association. No assignment shall be effective unless it meets the requirements of this Paragraph. In no event shall a Lot Owner assign his Boat Slip without receiving in return the assignment of another Boat Slip.

Notwithstanding anything to the contrary contained herein all costs and expenses in any way related to the joint Boat Slips, and any related facilities (the "Boat Slip Facilities") including, but not limited to, the cost of maintaining, repairing, replacing and insuring the Boat Slip Facilities, as well as all utilities shared by the Boat Slips shall be the responsibility of the lot owners that utilize the boat dock and to which the Boat Slips have been assigned. In no event shall any Lot Owner bear any responsibility, or incur any expense, relating to the Joint Boat Docks other than the joint dock that is assigned to his lot. Each Lot Owner shall be responsible for keeping his Boat Slip in good condition and shall maintain the Boat Slip at his expense. All Boat Slip maintenance cost relating to a shared dock shall be negotiated between the owners who utilize the shared dock and such cost shall not be an expense of the association.

If a shared Boat Dock/Slip is destroyed in whole or in part, or damaged by fire or other casualty, any Owner of a residence which shares such Boat Dock wall may restore or repair it, and the Owners of the other residences which share the restored or repaired dock shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common dock, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

Notwithstanding any other provision of this Section, an Owner of a residence which shares a common dock who, by such Owner's negligent or willful act or omission, damages or causes the shared dock to be damaged by not removing a boat during severe or hurricane type weather, shall bear the entire cost of the necessary repair or restoration.



The area identified on the Plat as "Floating Dock" "Boardwalk" and "Platform" shall be common elements. The Association may adopt, modify, change, and amend rules and regulations regarding the use of this Common Element from time to time including the right to prescribe reasonable rules and regulations governing its use, which rules and regulations shall apply equally to all Owners, their family members, guests, lessees and invitees.

## 8.2 *Dock Regulations.*

a. The Association shall have the right to adopt from time to time reasonable rules and regulations regarding the use of Boat Docks which may restrict among other things, the following:

- i. Maintenance of the area in and around the Boat Dock in a clean, safe condition;
- ii. Installation of utilities serving slips, individually or collectively;
- iii. No living aboard or overnight stays;
- iv. Removal of vessels during severe weather i.e. hurricanes;
- v. No commercial-type vessels moored or commercial activities conducted from the Boat Docks);

b. Boat Lifts. Each Lot Owner shall be entitled to install and maintain one marine boat lift to serve the Boat Dock adjacent to their Lot. Declarant may, but is not required to, install the lift at the time of the initial conveyance. The design and plans for the installation of the boatlift shall be submitted to the Association for prior written approval. The Association may adopt rules related to the design, style and installation of boat lifts. Although installed within the Limited Common Elements, the Boat Lift shall remain and be the property of the Lot Owner and all maintenance, repair and/or replacement shall be at the sole expense of the Lot Owner not the Association. No other lot owner may access any boat dock or slip not assigned to it and the use of said limited common area shall be exclusive to the two lot owners to which such joint dock has been assigned.

c. Dock Boxes. Lot Owners shall be entitled to maintain a dock box adjacent to their Boat Slip. The purchase and installation of the deck box shall be at the sole cost and expense of the Lot Owner. The Association shall have the ability to adopt rules related to the design, location and appearance of dock boxes.

d. No Leasing. No Lot Owner shall lease, rent or otherwise allow anyone other than the following persons to use his Boat Slip: (i) Lot Owner, (ii) Occupant. It being the intent of this restriction that a Boat Slip not be rented or used separately from the person or persons, or their guest, occupying or owning the Lot.

## ARTICLE IX INSURANCE

9.1 *Definitions.* As used in this Paragraph 9, the following terms shall be defined as described. "Structures" as used in this Article 9 shall mean and refer to all buildings and improvements, including Common Elements, Limited Common Elements, and Townhomes, affixed to that land described in Article Two and shown on the Plat, excluding, however, Owner Betterments as hereafter defined. With the exception of Owner Betterments, Structures are buildings and improvements that would be considered real property under the common law. Townhomes, except for any Owner Betterment contained therein, are included in the definition of Structures for purposes of the Association's property insurance.

Structures include improvements and betterments to Common Element made by the Association as opposed to an Owner.

"Owner Betterment" shall mean any upgrade or addition made to a Townhome, Common Element or Limited Common Element by an Owner that exceeds the replacement cost of the same item in the Basic Building Plans and Specifications (as defined below) or is an addition to the Townhome. For purposes of the Association's property insurance, an Owner Betterment is relevant only to the extent that its replacement cost exceeds the replacement cost of the same item or is an addition to the Unit. An example of an Owner Betterment would be a marble tile floor with a replacement cost of \$100.00 per square yard installed in a Townhome by an Owner in place of the carpeting shown as part of the Basic Building Plans and Specifications where the carpeting has a replacement cost of \$25.00 per square yard. If the townhome is totally destroyed by an insured casualty, the Association's property insurance would cover the value of carpeting shown in the Basic Building Plans and Specifications but not the replacement cost of the marble tile.

## 9.2. *Association's Insurance.*

a. The Association shall maintain, to the extent available:

i. Property insurance on the Structures, but not the docks and slips that are limited common elements, insuring against risks of direct physical loss commonly insured including fire, wind, and extended coverage perils. The total amount of property insurance shall be the full replacement cost of the Structures, if in the opinion of the Board of Directors, insurance in that amount is affordable; however, the total amount of property insurance after application of any deductibles shall be not less than ninety percent (90%) of the replacement cost of the Structures. The property insurance shall be subject to such deductibles as the board of directors deems appropriate.

No insurance is required to be maintained by the Association on the limited common elements as defined herein, including the docks and pilings allocated to a Lot/Unit. Should the Association decide to obtain insurance on the limited common elements, including the docks and slips, the cost of such insurance shall be considered a common expense of the Association and collected as such as provided herein. A Unit Owner may wish to obtain casualty insurance on the limited common elements associated with its unit but is not required to.

ii. Liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements. This liability insurance will cover only the liability of the Association, and Owners as members, but does not cover the Owner's individual liability for his acts or omissions while on Common Elements, within Limited Common Elements, or within his Townhome

iii. Fidelity insurance coverage to protect against dishonest acts in the handling of Association money by the officers, directors, volunteers, managers or employees of the Association.

iii. Fidelity insurance coverage to protect against dishonest acts in the handling of Association money by the officers, directors, volunteers, managers or employees of the Association

iv. Such other insurance as the Board deems advisable from time to time.

b. If the insurance described above of this Paragraph is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners.

c. Insurance policies carried pursuant to subparagraph 9.2(a) must provide that:

i. Each Owner is an insured person under the policy with respect to liability arising out of his membership in the Association;

ii. The insurer waives its right to subrogation under the policy against any Owner or members of his household;

iii. No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy; and

iv. If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

d. Any loss covered by the property policy under Section 9.2 (a) shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to the Association as insurance trustee, and not to any mortgagee or beneficiary under a deed of trust. The Association as insurance trustee shall hold any insurance proceeds in trust for Owners and lienholders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored. If there is a surplus of insurance proceeds after the property has been repaired or restored, the Owners of the affected Townhomes will share in any distribution of the surplus according to the formula used for assessing property insurance premiums. The Board may elect to credit the accounts of the Owners rather than making an actual distribution.

e. An insurer that has issued an insurance policy under this subparagraph shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

### **9.3. Insurance Required of Owners**

a. Each Owner is required to purchase, and at all times maintain, one or more insurance policies that cover the following:

**FLOOD INSURANCE REQUIRED:** If within a flood zone A-E, or commonly identified as being in a flood hazard zone then an owner must obtain Flood Insurance on the structure and pay for such cost.

Insurance policies carried pursuant to this subsection (i) must provide that:

The Association is an insured under the policy;

The insurer waives its right to subrogation under the policy against the Association;

No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy.

Additional required insurance shall be as follows:

- i. Dwelling coverage, sometimes known as "HO 6," on Owner Betterments within or appurtenant to his Townhome in the full replacement cost thereof insuring against risks of direct physical loss commonly insured including fire, wind, extended coverage perils, and if the Owner chooses, flood.
- ii. Personal property coverage on the personal property in Owner's Townhome insuring against risks of direct physical loss commonly insured including fire, wind, extended coverage perils, and if the Owner chooses, flood.
- iii. Personal liability coverage in the amount of at least \$500,000.00 insuring the Owner against lawsuits, legal expenses, and medical costs if he is legally responsible for injury or property damage to others in his Townhome. From time to time the Board of Directors will have the authority to require all Owners to maintain personal liability coverage exceeding \$500,000.00 if the Board determines such increased amount is advisable to adjust for inflation or exposure to risk.

b. The Board may require that Owner will file with the Association proof of insurance specified above in such form as required by the Board of Directors. If an Owner shall fail to provide or maintain such insurance policies, or give proof of such insurance to the Association, the Board shall have the authority to purchase such policies in the name of the Owner after giving such owner thirty calendar days' notice of intent to purchase insurance by first class mail sent to the Owner's last known address as shown in the association's records. If the Board purchases such insurance, the cost thereof will be deemed a common expense assessment benefitting only the Owner and assessed against the Owner and his Townhome. Such assessment, and all costs of collection including attorney's fees, will be the personal obligation of the Owner, constitute a lien on his Lot pursuant §47F-3-116, and be collectible according to §47F-3-116.

#### 9.4 *Assessment of Deductible; Intentional Damage.*

a. **Assessment of Deductibles.** If a component of a Townhome over which an Owner has maintenance responsibility fails, and such failure causes damage to the Townhome, other Townhomes and/or the Common Elements which damage is covered by the Association's property insurance, such Owner will be assessed the Association's insurance deductible if the Owner was negligent in causing the damage.

i. If circumstances indicate to the satisfaction of the Board that an Owner was not negligent, the deductible will be paid by the Association as a general common expense.

ii. If there is probable cause to believe that an Owner was negligent in causing the damage a hearing will be held by the Board of Directors to determine if the damage resulted from the Owner's negligence or intentional act and, in either case, the entire deductible will be assessed to the Owner. If the Board determines that the damage was not the result of the Owner's negligence or intentional act, the deductible will be a general common expense. The Owner will be given written notice of the hearing mailed by first class mail to the Owner's last known address at least 14 days in advance of the hearing and the Owner will have the right to be represented by an attorney at the hearing and to present evidence. The Owner will be given a written decision by the Board.

iii. An assessment of a deductible under this subparagraph will be deemed a common expense assessment benefitting only the Owner and his Lot under N.C.G.S. §47F- 3-115( c) (2) and assessed against the Owner and his Lot. Such assessment, and all costs of collection including attorney's fees, will be the personal obligation of the Owner, constitute a lien on his Lot pursuant §47F-3-116, and be collectible according to §47F-3-116.

b. Association's Responsibility for Deductible. If a component of a Common Element over which the Association has maintenance responsibility fails as a result of the negligence of the Association, and such failure causes damage to a Townhome and/or the Common Element which damage is covered by the Association's property insurance, the Association will pay the deductible as a general common expense.

c. Intentional Damage. An Owner is liable to the Association for all costs incurred by the Association in repairing uninsured damage caused by the intentional act of the Owner and such costs will be assessed against the owner's Lot. Prior to making such an assessment, the Board will hold a hearing as provided in subparagraph (a)(ii) above. An assessment of a deductible under this subparagraph will be deemed a common expense assessment benefitting only the Owner and his Lot under N.C.G.S. §47F-3-115(c) (2) and assessed against the Owner and his Lot. Such assessment, and all costs of collection including attorney's fees, will be the personal obligation of the Owner, constitute a lien on his Lot pursuant §47F-3-116, and be collectible according to §47F-3-116.

d. Owner Responsibility. The Owner will be responsible for the acts of all persons in his Townhome with his permission including his family members, guests, and lessees and their invitees.

## ARTICLE X REFUSE COLLECTION

10.1 ***Refuse Collection.*** Individual pickup refuse collection is provided for each Lot and Living Lot which is subject to assessment under Article V hereof by either the Town of Atlantic Beach or the Association.

10.2 ***Assessment of Costs.*** The cost of such refuse collection may be assessed against each Lot or Living Unit for which such collection is provided and shall be added to and become part of the annual assessment or charge to which such Lot or Living Unit is subject under Article V hereof and, as part of such annual assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article V hereof.

## ARTICLE XI ANNEXATION

11.1. ***Additional Property.*** Additional Lots and/or Common Elements may be annexed into the Development with the consent of two-thirds (2/3) of the Members, excluding the Declarant. Notwithstanding the above, during the Declarant Control Period as defined herein, Declarant may amend this Declaration to provide for additional property to be added and identify such property and total number of units to be added, not to exceed four lots, without the consent or joinder of the Members.

11.2. ***Recording.*** Any annexation made to the Property pursuant to Paragraph 11.1 above, shall be done and become effective upon recording of an amendment to this Declaration by the Association

in the Office of the Register of Deeds of Carteret County, specifying the additional lands to be annexed into and made a part of the Development.

## ARTICLE XII GENERAL PROVISIONS

**12.1 *Permitted Use and Restriction on Rentals.*** No Lot or Living Unit shall be used for any purpose other than residential. Nothing contained herein, however, shall be deemed to prevent an Owner from leasing a residence to a single-family unit for residential use under the conditions set out below.

Rental Restrictions: Residences located upon the lots may be rented under the following conditions:

Definition – “Rental” shall mean and refer to any agreement, oral or written, between an Owner and another person or entity which allows a third party, other than the property owner, to occupy Owner’s residence, or any portion of it, on the lot for any consideration or compensation.

It is specifically provided that Owners who rent their residence or part thereof, must comply with the following provisions:

1. (a) Owners shall not rent or exchange their residence, nor a room or rooms, in whole or in part, for any rental term less than 30 days. The Owner should have a personal knowledge of the character of the person(s) leasing their residence and upon request shall provide references to the Association, if requested. Total occupancy of any residence by more than ten (10) persons shall be specifically prohibited, whether during a rental term or not.

2. The Owner of any residence that is rented to others in accordance with this Amendment must ensure that their tenants have a written copy of Declaration, and Rules and Regulations set out by the Association, including parking restrictions and use of common areas of the subdivision, and such owner must ensure that all tenants agree to follow them. Each Owner will be liable for their tenants’ non-compliance as if the owner him/herself had committed the violation.

3. Violation of this amendment, the Declaration and the rules and regulations by Tenants will subject the Lot owner to fines and suspension of subdivision privileges or services. The fines and suspension shall be levied in accord with N.C. Gen. Stat. §47F-3-102 and N.C. Gen. Stat. §47F-3-107.1, and this remedy shall be in addition to all others remedies given to the Association under the Declaration.

**12.2 *Prohibited Activities.*** No business, noxious or offensive trade or activity shall be carried on upon or in any Lot or Living Unit, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

**12.3 *Mobile homes, etc.*** No trailer, mobile home, recreational vehicle, camper, or tent shall at any time be used for human habitation temporarily or permanently, nor shall any structure of a temporary nature be used for human habitation on the Properties.

**12.4 Exterior Appearance.** No Owner or occupant shall change the exterior appearance of a Living Unit without the express written consent of the Board of Directors.

**12.5 Screening of Tanks, Trash and Storage Receptacles.** All propane tanks, trash receptacles or similar storage receptacles are prohibited from being exposed to view and shall be screened by fencing, a wall, plantings or buried underground.

**12.6 Clothes Lines, Satellite Dishes.** Clothes lines, as well as, television satellites dishes exceeding 24 inches in diameter are expressly prohibited. Any television satellite dish not exceeding 24 inches in diameter shall additionally be installed at a location to the rear of the Living Unit and/or screened appropriately with fencing or vegetation so that the same is not easily seen or observed from adjoining Lots or the parking lot.

**12.7 Fill, Drainage.** No lot owner shall be permitted to fill in or alter any of the drainage systems, ditches or swales of the lots without the written approval of the Declarant.

**12.8 Fencing.** No wire fencing shall be permitted on any lot or portion thereof. A lot owner may install a fence in the common/limited common area adjacent to its lot, not closer to bulkhead than 7 feet, but the type of material, location and size must be approved by the AESTHETICS COMMITTEE as provided for in Article VII. All fencing materials and the location of the same shall be required to be approved in advance by the AESTHETICS COMMITTEE before being used or installed. The maximum height or style for fencing may be set by the Committee but all such design standard will be uniform throughout the development. The owner must provide an access area in any fencing approved for the Association to maintain the area in a neat and orderly manner, including mowing of such area. The cost of installation and maintenance of such fence shall be born solely by the Lot owner that installed it or its successors and assigns. The Lot owner also agrees to maintain and mow the landscaping and yard within the fenced off area in a neat and orderly appearance and the Association shall not be responsible for maintenance of any area located inside of the fence, even if located on common or limited common areas. Failure of a lot owner to maintain the fence or the area within the fence shall be a violation of this Declaration and subject the lot owner to fines and injunctive relief.

**12.9 Signs.** Subject to applicable law, no sign, banner, billboard, or advertisement of any kind, including without limitation, information signs, "for sale" or "for rent" signs, and those of contractors/subcontractors, shall be displayed on any Lot including inside any window so that it is visible from the exterior of the Townhouse except for signs, banners, and billboards approved in advance by the aesthetics committee, and by Declarant so long as Declarant owns any Lot, or any portion of Property. If permission is granted to any Owner to erect a sign on a Lot, the aesthetics committee and Declarant for as long as Declarant owns any Lot or a portion of the Property reserves the right to restrict the size, shape color, lettering, height, material and location of the sign, or in the alternative, provide the Owner with a sign to be used for such purposes. No sign shall be nailed or otherwise attached to trees.

No political signs shall be permitted to be placed on any Lot or Common Element by an Owner or the Association.

Notwithstanding the foregoing the following signs shall be allowed:

- a. street or directional signs erected by Declarant or by the Association;
- b. any sign constructed by any governmental agency;
- c. identification and informational signs constructed by Declarant, the purpose of which is to assist Declarant in identifying the project and the location of Lots or sales models within the development;
- d. during property development and sale, Declarant may erect such identifying and marketing signs as it may deem necessary.
- e. signs placed on Common Elements by the Declarant or the Association for purposes of identifying the same and/or containing information about the use of such property.

12.10 **Pets.** Pets shall be kept or maintained in or about the Living Unit only if the Owner is granted a conditional license to maintain up to two (2) pets by the Association. Such a license will be granted subject to the following conditions and reservations:

a. **Acceptable Pets.** The only pets to be permitted shall be dogs under ninety (90) pounds when fully grown, cats, and small birds and fish. No specific breed is prohibited, however, the Association shall specifically have the power and responsibility to designate, based upon temperament, size and/or nature or tendencies, from time to time a list of breeds of animals which shall be prohibited.

b. It shall be the responsibility of the Owner to pay for any and all costs involved in restoring to the original condition any damage caused to the Properties by a pet owned by an Owner, his tenants, guests or invitees.

c. An Owner shall be financially responsible for personal injury or property damage caused in relation to any Owner, tenant, guest, employee of the Association, or to any member of the public as a result of such pet being on the Properties.

c. Pets must be carried in arms or on a leash when taken in and out of a Living Unit.

e. The Board may, upon their sole determination, revoke or terminate the above conditional license if an Owner violated the terms of the conditional license, his pet is determined to be vicious, is annoying to other Owners or Occupants, or is otherwise a nuisance.

12.11 **Temporary Structures.** No temporary structures of any kind shall be permitted on the Properties at any time, excepting such structures as may be required during major repair and maintenance and have been approved by the Board of Directors.

12.12 **Open Fires.** No open fires, including outdoor cooking activities, shall be permitted anywhere on the Properties except in such areas as may be designated for such purposes, from time to time by the Board of Directors.

12.13 **Hazardous Use and Waste.** No Lot Owner or Occupant shall permit anything to be done to or kept in a Living Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Properties, or that would be in violation of any law, or



that will result in the commitment of waste (damage, abuse or destruction), to or in his Living Unit or the Common Elements.

**12.14 Rules.** The Board of Directors shall have the authority to adopt rules for the use of the Common Elements and shall furnish a written copy to said rules to the Owners. Any violation of such rules may, after a hearing in front of the Board of Directors, be punishable by fine not to exceed \$100.00 per violation, suspension of the voting rights of the violating Owner(s), not to exceed forty-five (45) days per violation and/or suspension of the rights to use of the Common Elements, not to exceed forty-five (45) days per violation. The Board of Directors shall also have the power to adopt rules and regulations which prohibit or limit the types of animals or household pets which may be kept in or about the Lots or Living Units and which govern their allowance upon the Common Elements.

### ARTICLE XIII RIGHTS OF FIRST MORTGAGEE; VA, FNMA and HUD PROVISIONS

**13.1 Availability of Association Documents, Books Records and Financial Statements.** The Association shall upon request and during normal business hours, make available for inspection by Owners and First Mortgagees and the insurers and guarantors of a first mortgage on any Lot, current copies of the Declaration, the By-Laws, other rules and regulations governing the Properties and the books, records and financial statements of the Association. The Association shall provide an audited financial statement for the preceding fiscal year if requested in writing by a first mortgagee or insurer or guarantor of a first mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of Lots, current copies of the Declaration, By-Laws, other rules and regulations governing the Properties, and the most recent annual audited financial statement, if such is prepared. For purposes of this Article, the term "available" shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances.

**13.2 Successor's Personal Obligation for Delinquent Assessments.** The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the successors in title or interest to said Lot unless said delinquent assessments are expressly assumed by them.

**13.3 Rights of Action.** The Association and any aggrieved Owner shall have a right of action against an Owner and any aggrieved Lot Owners shall have a right of action against the Association for failure to comply with the provisions of this Declaration, the By-Laws and the rules, regulations, and decisions of the Association made pursuant to authority granted to the Association in this Declaration and the By-Laws.

**13.4 Management and Other Agreements.** Any management agreement between the Declarant or the Association and a professional manager, or any other agreement providing for services of the Developer, sponsor, builder, or Declarant, if any exists, shall be terminable by either party thereto without cause and without payment of a termination fee upon not more than thirty (30) days prior written notice and shall not exceed a term of three (3) years, subject to renewal by the consent of both parties.

**13.5 Notice.** Each First Mortgagee and each insurer or guarantor of a First Mortgage, upon written request to the Association stating its mortgage held, insured or guaranteed, shall be

entitled to timely written notification by the Association of (i) any proposed amendment of this Declaration designed to effect a change in (1) the boundaries of any Lot or any Limited Common Elements appertaining thereto, (2) the interests in the Common Elements or Limited Common Elements relative to any Lot or the liability for Common Expenses appertaining thereto, (3) the number of votes in the Association appertaining to any Lot or (4) the purposes to which any Lot or the Common Elements are restricted; (ii) Any proposed termination of the Declaration; (iii) Any condemnation or casualty loss that affects either a material portion of the Properties or which affect any Lot on which there is a First Mortgage; (iv) any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot on which the First Mortgagee hold its First Mortgage; (v) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Each First Mortgagee who has requested the Association to notify it of any proposed action pursuant to this Paragraph 13.5 shall be considered an "Eligible Security Holder" for purposes of this Article.

**13.6 *Consent of Eligible Security Holders.*** This Paragraph shall be effective only if, at the time this Paragraph would apply, at least one Lot is subject to a First Mortgage. The following actions shall require the approval of at least FIFTY-ONE PERCENT (51.00%) of Eligible Security Holders prior to becoming effective:

- (i) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard that is not substantially in accordance with the Declaration and the original plans and specifications;
- (ii) Any election to terminate the Declaration after substantial destruction or a substantial taking in condemnation of the Properties;
- (iii) Unless the formula for reallocation of interests in the Common Elements after a partial condemnation or partial destruction of the Condominium is provided elsewhere in this Declaration or by the Act, a reallocation of interest in the Common Elements resulting from a partial condemnation or partial destruction of the Properties.
- (iv) Any decision to materially amend any provisions of the Declaration or By-Laws, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the below referenced matters:
  - a. Voting Rights;
  - b. Assessments, assessment liens or subordination of such liens;
  - c. Reserves for maintenance, repair, and replacement of Common Elements;
  - d. Responsibility for maintenance and repair of the Condominium;
  - e. Re-allocation of interest in the Common Elements or Limited Common Elements or rights to their use;
  - f. Boundaries of any Lot;
  - g. Convertibility of Lots into Common Elements or Common Elements into Lots;
  - h. Expansion or contraction of the Development or the addition, annexation or withdrawal of property to or from the Condominium beyond those provisions already contained within the Declaration regarding the annexation of additional properties found in Article XI;
  - i. Insurance of fidelity bonds;
  - j. Leasing of Living Units;
  - k. Imposition of any restrictions on an Owner's right to sell, transfer or otherwise convey his Lot outside of those provided for in the Declaration;
  - l. A decision by the Association to establish self-management when

- professional management had been required previously by the agencies or corporations;
- m. Any provisions that expressly benefit First Mortgagees or insurers or guarantors of First Mortgages.

**13.7 *Consent of First Mortgagees for Termination of Declaration.*** This Paragraph shall be effective only if, at the time this Paragraph would apply, at least one Lot is subject to a First Mortgage. Any decision to terminate this Declaration for reasons other than substantial destruction or condemnation of the Property shall require the prior consent of SIXTY SEVEN PERCENT (67.00%) of Eligible Security Holders.

**13.8 *Eligible Security Holder Consent to Certain Actions.*** With respect only to non-material amendments (which excludes items (a) to (m) of Paragraph 13.6(iv) below), such as for the correction of technical errors or for clarification, any Eligible Security Holder who receives a written request by the Association, or any Owner, to approve an addition or amendment to the Declaration or By-Laws who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

**13.9 *Assessments.*** Assessments shall be due and payable in monthly installments or as the Board directs. As legally required by N.C.G.S. § 47F-3-115 of the Act, Declarant shall pay all accrued expenses of the Development not covered by paid dues as provided in Section 5.8. An assessment shall be deemed levied against the Lot upon the giving of notice by the Board to a Member of the Association who is an Owner of that Lot. Owners shall have no obligation to pay monthly assessments until an assessment is levied. Assessments will begin at such time as the Board elects.

**13.10 *Rights of First Mortgagee; Insurance Proceeds or Condemnation Awards.*** With respect to First Mortgages held by or for the benefit of any person, no provision of this Declaration or the By-Laws shall be deemed to give an Owner, or any other person, priority over any rights of a First Mortgagee pursuant to its First Mortgage on said Owner's Lot, in the case of a distribution to said Owner of insurance proceeds or condemnation awards for losses to or a taking of Lots and/or Common Elements.

**13.11 *Annexation.*** Except as provided for in Article XI, no additional real property may be added to the Development without the prior written consent of any of the following that holds, insures or guarantees any mortgage on a Lot: HUD, VA and FNMA, at the time the additional property is sought to be added to the Development.

**13.12 *Completion of Improvements.*** Notwithstanding any provision to the contrary contained herein, all improvements on each lot annexed into the Development shall be substantially completed within one year of issuance of a building permit for improvements on each townhouse lot.

#### ARTICLE XIV MISCELLANEOUS PROVISIONS

**14.1 *Duration.*** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit or and be enforceable by the Association, or, the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and

assigns, for a term of twenty (20) years from the date this Declaration is recorded with the Register of Deeds of Carteret County, after which time said covenants shall be automatically renewed and extended for successive periods of ten (10) years unless otherwise amended.

**14.2 Amendment.** This Declaration may be amended by the affirmative vote or written consent or any combination thereof, of Owners of sixty-seven percent (67%) of the Class A Membership and the written consent of the Declarant, so long as the Declarant owns any property which is subject to the Declaration or which may be subject to the Declaration by the Declarant. No amendment shall be effective until reduced to writing and recorded at the Carteret County Registry. No amendment shall change, modify or alter the rights reserved to Declarant without Declarant's written consent which consent shall be attached to and recorded with any such amendment.

Notwithstanding the above provisions and in addition to any other rights held by the Declarant, during the Development Period, Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulations, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots or Units; (iii) required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make or purchase Mortgage loans on the Lots or Units; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots or Units; or (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration (vi) Amendments, during the Declarant Control Period that would allow the Declarant to change any provision of the Declaration or the Bylaws, which, in the sole judgment of the Declarant, tends to impair the development or marketing rights of the Declarant under the Declaration or the Bylaws, or interferes with the development of or construction on any portion of the Property provided such amendment does not materially adversely affect the substantive rights of any Owners hereunder nor adversely affect title to any Lot without the consent of the affected Owner or (viii) to correct typographical or grammatical errors.

Variances. Notwithstanding anything to the contrary contained herein, the Declarant or the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Properties.

**14.3 Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, or otherwise delivered, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

**14.4 Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in on event be deemed a waiver of the right to do so thereafter.

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

14.6 **Conflict with the Act; Severability.** Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provision of Chapter 47F of the North Carolina General Statutes, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event, the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph, or clause of this Declaration, or of any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or affect the rest of this Declaration or the application of any such covenants, restriction, condition, limitation, provision, paragraph or clause to any other Person or circumstance.

14.7 **Interpretation of Declaration.** Whenever appropriate singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part in which they appear.

14.8 **Captions.** The captions herein are only for convenience and reference. They do not define, limit or describe the scope of this Declaration, or the intent of any provision.

14.9 **Authority of Association.** Unless specifically limited by a provision of this Declaration or the By-Laws, any action allowed or required to be taken by the Association may be taken by a majority vote of the Board, without joinder or approval of the Members of the Association.

14.10 **Arbitration.** In the event of any dispute arising under these covenants including but limited to the need, responsibility for or payment of insurance premiums, any issues with the party walls as identified by Section 11, the cost or need for maintenance of the exterior, and walkways or the yard or landscaping, and other matters herein, then the dispute shall be submitted to binding arbitration. In the event of dispute, the lot Owners shall submit the matter to arbitration within fifteen (15) days of written notice to the other lot owner of a disagreement/dispute by either lot owner, certified mail, return receipt requested. The initial arbitrator is White & Allen, P.A., 304 N. 35<sup>th</sup> Street, Morehead City, NC 28557, but the Owners may designate any other arbitrator they wish. In the event that this arbitrator cannot serve when called upon, then each Owner shall choose an arbitrator and the arbitrators so chosen shall choose a third party to serve as arbitrator. The decision of the within named arbitrator or appointed arbitrator shall be binding upon all Owners. In the event that it is impossible to appoint an arbitrator, any Owner may petition the Superior Court of Carteret County, North Carolina, to appoint an arbitrator or to hear said Owner's cause in law or in equity. The cost of the arbitration hearing shall be allocated by Arbitrator and such Arbitrator may, but is not required to, allocate that all cost of the arbitration including any cost incurred by prevailing party, be reimbursed by the other party. In no event shall a prevailing party be required to pay for more than 50% of the cost of arbitration.

Following arbitration and the failure of the owner to either comply with the arbitration decision or to pay his or their portion of the costs, the other owner not in default is authorized upon 5 days written notice to the other Lot Owner, to pay for and complete the repairs, maintenance,

construction or other work and/or to file a civil action against the other owner in default to enforce the Arbitration decision. Interest shall accrue on any sums owed at 1.5 per cent per month and the interest together with a reasonable attorney's fees and the cost of the action shall be recoverable in any civil action against the defaulting owner.

ARTICLE XV  
STORMWATER MANAGEMENT

15.1 Showboat Cottages were approved under the State Stormwater Management Permit Number SW8 220103 as issued by the Division of Energy, Mineral and Land Resources under the Stormwater Management Regulations. This project was reviewed and approved by NCDEQ-DEMLR Stormwater Section under their Exemption-Redevelopment option and specific covenants with specific language are not required under this option. The Association and lot owners will comply in all respects with the conditions of the Permit.

Pursuant to the Permit, the total proposed built-upon area (BUA) of 60,691 square feet does not exceed the existing BUA of 60,691 square feet within this 80,366 square foot project area. The 60,691 square feet of allocated BUA includes 40,947 square feet of proposed BUA, 0 of existing BUA that will remain, and 19,744 square feet of BUA allocated for future improvements, such as decks/patios and storage. The proposed storm water control (sheet flow), provides equal protection of surface waters as the existing storm water control, which is sheet flow.

15.2 *Transfer to the Association.* All obligations of the Declarant contained in this Article Fifteen shall be transferred to the Association at such time as the Declarant, in its sole discretion, determines to be appropriate. The Association shall be obligated to accept all responsibilities and obligations required to be performed in order to ensure compliance with State Stormwater Management Permit Number SW8 220103, as issued by the Division of Energy, Mineral and Land Resources as set forth in this Article and within the permit itself.

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SEE SIGNATURE PAGE

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed as of the day and year first above written.

(Corporate Seal)

BALLOU-LEWIS PROPERTIES, LLC.

By:

Samuel Ballou  
Samuel Ballou, Manager

BALLOU-LEWIS PROPERTIES, LLC.

By:

Phillip A. Lewis  
Phillip A. Lewis, Manager

STATE OF NORTH CAROLINA

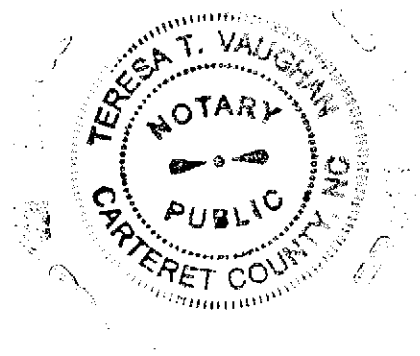
COUNTY OF CARTERET

I, a Notary Public of the County and State above, do hereby certify that Samuel Ballou and Phillip A. Lewis, personally came before me this day and acknowledged that they are the Managers of BALLOU-LEWIS PROPERTIES, LLC., a North Carolina LLC, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by them as its Manager.

This the 11<sup>th</sup> day of January, 2024.

Teresa T. Vaughan  
Notary Public

My commission expires: 1/29/2025



## EXHIBIT A

## BYLAWS

**NORTH CAROLINA  
COUNTY OF CARTERET**

**BY-LAWS  
OF  
SHOWBOAT COTTAGES OWNERS' ASSOCIATION, INC.**

ARTICLE I - OFFICES

The office and principal place of business of the Corporation shall be located at: 3302 C Bridges Street, Morehead City, NC 28557 as shown on the Articles of Incorporation attached as Exhibit A. The Corporation may also maintain offices at such other places within or without the United States as the Board of Directors may from time to time determine.

ARTICLE II – MEMBERS

The Members of the Corporation shall be those persons or entities which meet the requirements for membership in the Corporation as set out in the Declaration of Covenants, Restrictions and Covenants running with the Land recorded prior to the first conveyance of a unit, in the Carteret County, North Carolina Registry, (hereinafter referred to as the "Declaration").

ARTICLE III – MEETING OF MEMBERS

SECTION 1 – Annual Meetings

The annual meeting of the Members of the Corporation shall be held at a date and time selected by the Board of Directors which shall be within five (5) months after the close of the fiscal year of the Corporation. The annual meeting shall be held for the purposes of electing directors and transacting such other business as may properly come before the meeting.

SECTION 2 – Special Meetings

Special meetings of the members may be called at any time by the Board of Directors or by the President, and special meetings shall be called by the President or the Secretary at the written request of twenty percent (20%) of the Members, or as otherwise required under the provisions of the laws of the State of North Carolina ("Corporation Law").

SECTION 3 – Place of Meetings

All meetings of the members shall be held at the principal office of the Corporation or at such other places as shall be designated in the notices or waivers of notice of such meetings.



SECTION 4 – Notice of Meetings

(a) Written notice of each meeting of the Members, whether annual or special, stating the time and place where it is to be held, shall be served either personally or by mail, not less than ten (10) or more than fifty (50) days before the meeting, upon each member of record entitled to vote at such meeting and to any other person to whom the giving of notice may be required by law. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called and shall indicate that it is being issued by, or at the direction of, the person or persons calling the meeting. If mailed, such notice shall be directed to each such Member at his address as it appears on the membership records of the Corporation, unless he shall have previously filed with the Secretary of the Corporation a written request that notices intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request.

(b) Notice of any meeting need not be given to (i) any person who may become a Member of record after the mailing of such notice and prior to the meeting, (ii) any Member who attends such meeting, in person or by proxy, or (iii) any Member who, in person or by proxy submits a signed waiver of notice either before or after such meeting. Notice of any adjourned meeting of members need not be given, unless otherwise required by statute.

SECTION 5 – Quorum

(a) Except as otherwise provided herein, by statute or in the Articles of Incorporation (such Articles and any amendments thereof being hereinafter collectively referred to as the “Articles of Incorporation”), at all meetings of the Members of the Corporation, the presence at the commencement of such meetings in person or by proxy of one-third (1/3) of the Members of the Corporation in good standing and entitled to vote shall be necessary and sufficient to constitute a quorum for the transaction of any business. The withdrawal of any Member after the commencement of a meeting shall have no effect of the existence of a quorum after a quorum has been established at such meeting.

(b) Despite the absence of a quorum at any annual or special meeting of the members, those in attendance and entitled to vote thereon may, by majority vote, adjourn the meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called if a quorum had been present. No meeting may be adjourned for longer than forty-eight (48) hours.

SECTION 6 – Voting

(a) Except as otherwise provided by statute or by the Articles of Incorporation, any corporate action, other than the election of directors to be taken by vote of the members, shall be authorized by a majority of votes cast at a meeting of members entitled to vote thereon.

(b) Except as otherwise provided by statute or by the Articles of Incorporation, a Member shall be entitled to one (1) vote for each Lot owned; provided, however, when more than one person holds an

interest in a Lot, all such persons shall be members and the vote for such Lot shall be exercised as they, among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

(c) Each member entitled to vote or to express consent or dissent without a meeting may do so by proxy; provided, however, that the instrument authorizing such proxy to act shall have been executed in writing by the member himself or by his Attorney-in-fact thereunto duly authorized in writing. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless the person(s) executing it shall have specified therein the length of time it is to continue in force. Such instrument shall be exhibited to the Secretary at the meeting and shall be filed with the records of the Corporation.

(d) Any resolution in writing signed by all of the members entitled to vote thereon shall be and constitute action by such members to the effect therein expressed, with the same force and effect as if the same had been duly passed by unanimous vote at a duly called meeting of members, and such resolutions so signed shall be inserted in the Minute Book of the Corporation under its proper date.

#### ARTICLE IV – BOARD OF DIRECTORS

##### SECTION 1 – Number, Election and Term of Office

(a) Purpose, Number and Term of Office. The Board of Directors shall initially consist of (1) initial member of the Board of Directors as named in the Articles of Incorporation of the Association. The business and affairs of the Association shall be managed by the Board of Directors and upon resignation of the above member, the Board shall consist of three (3) individuals, who shall be entitled to act on behalf of the Association. Subsequently, the Board of Directors shall be appointed by the Declarant until such time as the period of Declarant control of the Association has terminated pursuant to the provisions of the Declaration. At the first meeting of the membership of the Association following the termination of the period of Declarant control of the Association, the members of the Board of Directors shall be elected by the membership of the Association and those persons who receive the highest number of votes at a meeting at which a quorum is present shall be elected. Each member of the Board of Directors shall hold office until his/her death, disability, resignation or removal, or until the expiration of his/her term and the election of his/her successor. All Directors elected by the membership of the Association must be lot owners. Should a lot have more than one owner, only one director is allowed to serve per lot on the Board.

(b) Except as may otherwise be provided herein or in the Articles of Incorporation, the members of the Board of Directors of the Corporation, shall be elected by a plurality of the votes cast at a meeting of the Members entitled to vote in the election. It shall be a qualification to be a Director that such person also be a Member of the Corporation.

(c) Each director shall hold office until the annual meeting of the Members next succeeding his election and until his successor is elected and qualified, or until his prior death, resignation or removal.

(d) Nominations for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of Members. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or

more Members of the Corporation. The Nominating Committee shall be appointed by the Board of Directors at least ninety (90) days prior to each annual meeting of the Members, to serve until the close of such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but no less than the number of vacancies that are to be filled. Such nominations shall be contained in the Notice of the Annual Meeting provided to the Members.

## SECTION 2 – Duties and Powers

The Board of Directors shall be responsible for the control and management of the affairs, property and interests of the Corporation and may exercise all powers of the Corporation, except as are in the Declaration, Articles of Incorporation or by statute expressly conferred upon or reserved to the Members.

By way of illustration, but not limitation, the powers of the Board of Directors shall include:

- i. Adopt rules and regulations governing the use of the common properties and amenities, the personal conduct of members and their guests thereon, and establish penalties for the infraction thereof not to exceed \$150.00 per incident;
- ii. Suspend the voting rights and right of use of the recreational facilities of a Member, during any period in which such Member shall be in default in the payment of any assessment levied by the Corporation; and to suspend such rights, after notice and hearing, for infraction of published rules and regulations for a period no longer than forty-five (45) days;
- iii. Declare the office of a member of the Board of Directors to be vacant in the event such member of the Board shall be absent from three (3) consecutive regular meetings of the Board;
- iv. To employ a manager, an independent contractor, or other employees as is deemed necessary, and prescribe their duties; provided, that any contract for professional management must contain a clause requiring not more than ninety (90) days termination notice;
- v. Procure, maintain, and pay premiums on, insurance policy(s) and equitably assess the members the same for their pro rata portion of such expense;
- vi. Impose and receive any payments, fees, or charges for the maintenance, use, or operation of the common properties and amenities on the members;
- vii. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Corporation;
- viii. Exercise any other powers necessary and proper for the governance and operation of the Corporation;
- ix. To have an to exercise any and all powers, rights and privileges, whether implicit or explicit, provided: (1) to owners' associations under Chapter 47F of the North Carolina General

Statutes, (2) to a corporation organized under the Non-Profit Corporation Law of the State of North Carolina existing now or as may hereafter be provided and (3) to the Corporation under the Declaration;

x. Notwithstanding any other provision herein, the Board of Directors is unilaterally authorized, on behalf of the Association, to submit any dispute with or claim against the owner(s) of any Lot(s) to voluntary arbitration pursuant to any arbitration program then in effect in the General Court of Justice of Pitt County, North Carolina. A lot owner shall have no right to require arbitration if the Association does not agree.

### SECTION 3 – Annual and Regular Meetings; Notice

(a) A regular annual meeting of the Board of directors shall be held immediately following the annual meeting of the Members, which shall be at the place of such annual meeting of Members.

(b) The Board of Directors from time to time may provide by resolution for the holding of such other regular meetings of the Board of Directors and may fix the time and place thereof.

(c) Notice of any regular meeting of the Board of Directors shall not be required to be given and, if given, need not specify the purpose of the meeting; provided, however, that in case the Board of Directors shall fix or change the time or place of any regular meeting, notice of such action shall be given to each director who shall not have been present at the meeting at which such action was taken within the time limited, which notice shall be given in the manner set forth in paragraph (b) of Section 4 of this Article III with respect to special meetings, unless such notice shall be waived in the manner set forth in paragraph (c) of such Section 4.

### SECTION 4 – Special Meetings; Notice

(a) Special meetings of the Board of Directors shall be held whenever called by the President or by one of the directors at such time and place as may be specified in the respective notices or waivers of notice thereof.

(b) Notice of special meetings shall be mailed directly to each director, shall be addressed to him at his residence or usual place of business at least two (2) days before the day on which the meeting is to be held, or shall be sent to him at such place by telegram, radio or cable, or shall be delivered to him personally or given to him orally, not later than the day before the day on which the meeting is to be held. A notice or waiver of notice, except as required in Section 8 or Section 10 of this Article III, need not specify the purpose of the meeting.

(c) Notice of any special meeting shall not be required to be given to any director who shall attend such meeting without protesting prior thereto or at its commencement the lack of notice to him, or to any director who submits a signed waiver of notice, whether before or after the meeting. Notice of any adjourned meeting shall not be required to be given.

SECTION 5 – Chairman

At all meetings of the Board of Directors, the Chairman of the Board, if any and if present, shall preside. If there shall be no Chairman or if he shall be absent, the President shall preside, and in his absence, a Chairman chosen by the Directors present shall preside.

SECTION 6 – Quorum and Adjournments

(a) At all meetings of the Board of Directors, the presence of a majority of the entire Board shall be necessary and sufficient to constitute a quorum for the transaction of business, except as otherwise provided by law, by the Articles of Incorporation or by these By-Laws.

(b) A majority of the directors present at the time and place of any regular or special meeting, although less than a quorum, may adjourn the same from time to time without notice until a quorum shall be present.

SECTION 7 – Manner of Acting

(a) At all meetings of the Board of Directors, each director present shall have one (1) vote.

(b) Except as otherwise provided by statute, by the Articles of Incorporation or by these By-Laws, the action of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Any action authorized in writing by all or the directors entitled to vote thereon and filed with the minutes of the Corporation shall be the act of the Board of Directors, with the same force and effect as if the same had been passed by unanimous vote at a duly called meeting of the Board.

SECTION 8 – Vacancies

Any vacancy in the Board of Directors occurring by reason of an increase in the number of directors or by reason of the death, resignation, disqualification, removal (unless a vacancy be filled by the members at the meeting at which the removal was effected) or inability to act of any director, or otherwise, shall be filled for the unexpired portion of the term by a majority vote of the remaining directors even if less than a quorum, at any regular meeting or special meeting of the Board of Directors called for that purpose.

SECTION 9 – Resignation

Any director may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Corporation. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the Board of Directors or such officer, and the acceptance of such resignation shall not be necessary to make it effective.

SECTION 10 – Removal

Any director may be removed with or without cause at any time by the members at a special meeting of the members called for that purpose, and any director may be removed for cause by action of the Board.

SECTION 11 – Salary

No stated salary shall be paid to directors, as such, for their services; provided that by resolution of the Board of Directors a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board; and provided further, however, that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

SECTION 12 – Contracts

(a) No contract or other transaction between this Corporation and any other Corporation shall be impaired, affected or invalidated, nor shall any director be liable in any way, by reason of the fact that any one or more of the directors of this Corporation is or are interested in, or is a director or officer, or are directors or officers of, such other Corporation, provided that such facts are disclosed or made known to the Board of Directors.

(b) Any director, personally and individually, may be a party to or may be interested in any contract or transaction of this Corporation, and no director shall be liable in any way by reason of such interest, provided that the fact of such interest be disclosed or made known to the Board of Directors, and provided further that the Board of Directors shall authorize, approve or ratify such contract or transaction by the vote (not counting the vote of any such director) of a majority of a quorum, notwithstanding the presence of any such director at the meeting at which the action is taken. Such director or directors may be counted in determining the presence of a quorum at such meeting. This Section 12 shall not be construed to impair or invalidate or in any way affect any contract or other transaction which would otherwise be valid under the law (common, statutory, or otherwise) applicable thereto.

SECTION 13 – Committees and Adjudicatory Panel

COMMITTEES: The Board of Directors, by resolution adopted by a majority of the entire Board, may from time to time designate from among its members an executive committee and such other committees and alternate members thereof as they deem desirable, each consisting of three or more members, which committees shall have such powers and authority (to the extent permitted by law) as may be provided in such resolution. Each such committee shall serve at the pleasure of the Board.

ADJUDICATORY PANEL

Section 1. Appointment of Adjudicatory Panel. The Board of Directors shall, not less than annually, appoint an Adjudicatory Panel of three (3) individuals, all of whom shall be residents of the subdivision. Members of the Board shall be eligible to serve as members of the Adjudicatory Panel. Members of the Panel shall be appointed to one-year terms, and each member shall sit until his/her death, disability, resignation or removal, or until the expiration of his/her term and the appointment of his/her successor.

Section 2. Hearings. In the event that a fine is assessed against a unit owner by the Board of Directors pursuant to these By Laws, the Adjudicatory Panel shall provide to the lot owner so fined notice of the violation and an opportunity to be heard regarding the alleged violation and the assessed fine. If within ten (10) days of receipt of the notice the owner requests in writing a hearing, the Adjudicatory Panel shall hear the matter within twenty (20) days of the date of the written request. Three (3) members of the Panel shall constitute a quorum for the purpose of conducting a hearing. Following such a hearing, the Adjudicatory Panel shall confirm, deny or modify the fine imposed by the Board and shall notify the owner of its decision. The decision of the Panel with regard to the fine shall be final.

## ARTICLE V – OFFICERS

### SECTION 1 – Number, Qualification, Election and Term of Office

- (a) The officers of the Corporation shall consist of a President, Secretary, Treasurer and such other officers, including a Chairman of the Board of Directors and one or more Vice-Presidents, as the Board of Directors may from time to time deem advisable. The Chairman of the Board of Directors is required to be a director of the Corporation. Any other officer may be, but is not required to be, a director of the Corporation. Any two or more offices may be held by the same person, except for the offices of President and Secretary.
- (b) The Board of Directors shall elect the officers of the Corporation at the regular annual meeting of the Board following the annual meeting of the members.
- (c) Each officer shall hold office until the annual meeting of the Board of Directors next succeeding his election and until his successor shall have been elected and qualified, or until his death, resignation or removal.

### SECTION 2 – Resignation

Any officer may resign at any time by giving written notice of such resignation to the Board of Directors, the President or the Secretary of the Corporation. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the Board of Directors or by such officer, and the acceptance of such resignation shall not be necessary to make it effective.

### SECTION 3 – Removal

Any officer may be removed, either with or without cause, and a successor elected by the Board of Directors at any time.

### SECTION 4 – Vacancies

A vacancy in any office by reason of death, resignation, inability to act, disqualification, or any other cause, may at any time be filled for the unexpired portion of the term by the Board of Directors.

SECTION 5 – Duties of Officers

Officers of the Corporation shall, unless otherwise provided by the Board of Directors, each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may be set forth in these By-Laws or as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Corporation.

SECTION 6 – Sureties and Bonds

In case the Board of Directors shall so require, any officer, employee or agent of the Corporation shall execute to the Corporation a bond in such sum, and with such surety or sureties as the Board of Directors may direct, conditioned upon the faithful performance of his duties to the Corporation, including responsibility for negligence and for the accounting for all property, funds or securities of the Corporation which may come into his hands.

## ARTICLE VI – FISCAL YEAR

The fiscal year of the Corporation shall be fixed by the Board of Directors from time to time, subject to applicable law.

## ARTICLE VII – CORPORATE SEAL

The corporate seal, if any, shall be in such form as shall be approved from time to time by the Board of Directors.

## ARTICLE VIII – INDEMNIFICATION

Any person who at any time serves or has served as a director, officer, employee or agent of the Corporation, or in such capacity at the request of the Corporation for any other corporation, partnership, joint venture, trust or other enterprise, shall have a right to be indemnified by the Corporation to the fullest extent permitted by law against (a) reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with any threatened or pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether or not brought by or on behalf of the Corporation, seeking to hold him liable by reason of the fact that he is or was acting in such capacity, and (b) reasonable payments made by him in satisfaction of any judgment, money decree, fine, penalty, or settlement for which he may become liable in any such action, suit or proceeding.

The Board of Directors of the Corporation shall take all such action as may be necessary and appropriate to authorize the Corporation to pay the indemnification required by this By-Law, including without limitation, to the extent needed, making a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him and giving notice to, and obtaining approval of, the members of the Corporation.

Any person who at any time after the adoption of these By-Laws serves or has served in any of the aforesaid capacities for or on behalf of the Corporation shall be deemed to be doing or to have done so



in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this By-Law.

## ARTICLE IX – AMENDMENTS

### SECTION 1 – By Members

All By-Laws of the Corporation shall be subject to alteration or repeal, and new By-Laws may be made, by a majority vote of the Members at the time entitled to vote in the election of directors.

### SECTION 2 – By Directors

The Board of Directors shall have the power to make, adopt, alter, amend and repeal, from time to time, by-laws of the Corporation; provided, however, that the Members entitled to vote with respect thereto in Section 1 of this Article IX may alter, amend or repeal by-laws made by the Board of Directors.

Notwithstanding the above, the Board of Directors shall have no power to change the quorum for meetings of Members or of the Board of Directors or to change any provisions of the By-Laws with respect to the removal of Directors or the filling of vacancies in the Board resulting from the removal by the Members. If any By-Law regulating an impending election of Directors is adopted, amended or repealed by the Board of Directors, there shall be set forth in the notice of the next meeting of Members for the election of Directors, the By-Law(s) so adopted, amended or repealed, together with a concise statement of the changes made.

## ARTICLE X – PROHIBITION AGAINST SHARING IN CORPORATE EARNINGS

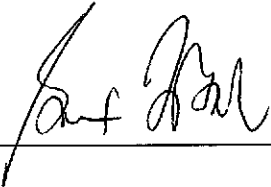
No Director, Officer or employee of or member of a committee of or person connected with the Corporation, or any other private individual, shall receive at any time any of the earnings or pecuniary profit from the operations of the Corporation. This shall not prevent the payment to any such person of such reasonable compensation for services rendered to or for the Corporation in effecting any of its purposes as shall be fixed by the Board of Directors; and no such person or persons shall be entitled to share in the distribution or winding up of the affairs of the Corporation, whether voluntary or involuntary. The assets of the Corporation, after all debts have been satisfied, shall be distributed, transferred, conveyed, delivered and paid over, in such amounts as the Board may determine or as may be determined by a Court of competent jurisdiction, exclusively to charitable, religious, scientific, literary, or educational organizations that would then qualify under the applicable provisions of the Internal Revenue Code and its Regulations as they now exist or may hereafter be amended, relating to Charitable Organizations

## ARTICLE XI MISCELLANEOUS

Capitalized terms and words used in these By-Laws shall have the same meaning as attached to them in the Declaration unless the context clearly requires otherwise and then in such case the meaning shall be their common and ordinary meaning or, in alternate thereto, as the context would otherwise require in order to give meaning and effect to such terms and words.

THE UNDERSIGNED certifies that the foregoing By-Laws have been adopted as the By-Laws of the Corporation in the accordance with the requirements of the Corporation Law.

This the 11 day of January, 2024.

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

Initial Member of Board of Directors

EXHIBIT A to Bylaws

(Articles of Incorporation filed with the NC Secretary of State)



# NORTH CAROLINA

## Department of the Secretary of State

To all whom these presents shall come, Greetings:

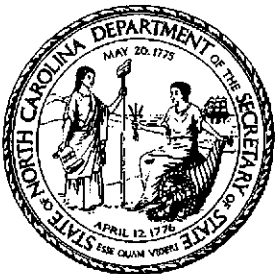
I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

### ARTICLES OF INCORPORATION

OF

### SHOWBOAT COTTAGES OWNERS' ASSOCIATION, INC.

the original of which was filed in this office on the 2nd day of January, 2024.



Scan to verify online.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 2nd day of January, 2024.

*Elaine F. Marshall*

Secretary of State

SOSID: 2762334  
 Date Filed: 1/2/2024 1:09:00 PM  
 Elaine F. Marshall  
 North Carolina Secretary of State  
 C2023 363 00593

**ARTICLES OF INCORPORATION  
 OF  
 SHOWBOAT COTTAGES OWNERS' ASSOCIATION, INC.**

Pursuant to Section 55A-2-02 of the General Statutes of North Carolina, the undersigned does hereby submit these Articles of Incorporation for the purposes of forming a nonprofit corporation.

1. **NAME.** The name of the corporation is

SHOWBOAT COTTAGES OWNERS' ASSOCIATION, INC.

2. **PURPOSE.** The purposes and powers for which the Corporation is organized are as follows:

a. To operate and manage the residential townhome subdivision, located in Town of Atlantic Beach, Morehead Township, Carteret County, North Carolina as shown on the plat to recorded in Map Book 34, Page 614, (Instrument File #34614) of the Carteret County Registry;

b. To undertake the performance of, and carry out the acts and duties incident to the administration of the operation and management of the Corporation as set out and contained in those Articles and the Declaration of Conditions, Restrictions and Easements, to be recorded in the Carteret County Registry (the "Declaration");

c. To make, establish and enforce reasonable rules and regulations governing the use of the Common Areas (as described in the Declaration), and other real and personal property which may be owned by the Corporation;

d. To make, levy and collect assessments against Owners of Lots (as described in the Declaration); to provide the funds to pay for the common expenses of the Corporation as provided in the Declaration and to use and expend the proceeds of assessments in the exercise of the powers and duties of the Corporation; to use said assessments to promote the recreation, acquisition, improvement and maintenance of the Common Areas, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, including but not limited to the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management, supervision thereof, the maintenance of insurance in accordance with the By-Laws, including the employment of attorneys and other professionals to represent the Corporation when necessary for such other needs as may arise;

- e. To maintain, repair, replace, and operate the properties for which the Corporation is responsible;
- f. To enforce by any legal means, the provisions of the Declaration, the By-Laws, and the rules and regulations for the use of the Corporation's properties;
- g. To have all of the common law and statutory powers of a non-profit corporation under NCGS Chapters 55A and 47E and also those powers as set out in the Declaration and all powers reasonably necessary to implement the purposes of the Corporation;

3. **MEMBERS.** The Corporation shall have as its members those persons defined in the Declaration.

4. **REGISTERED OFFICE AND AGENT.** The street address and county of the initial registered office of the corporation is 3302 C. Bridges Street, Morehead City, NC 28557, Carteret County, and the name of the registered agent is Samuel F. Ballou, Jr. The mailing address of the initial registered office is the same as above.

5. **PRINCIPAL OFFICE.** The street address and county of the principal office is:  
3302 C Bridges Street  
Morehead City, NC 28557  
Carteret County;

6. **INITIAL DIRECTORS.** The number of directors of the corporation may be fixed in the By-Laws. The number of persons constituting the initial board of directors shall be One (1). The name and address of the person who is to serve as the initial director until their successor is elected and qualified is:

NAME	ADDRESS
SAMUEL F. BALLOU, JR.	3302 C. Bridges Street Morehead City, NC 28557

7. **INDEMNIFICATION OF OFFICERS AND DIRECTORS.** To the fullest extent permitted by North Carolina General Statutes Section 55A-8-57(a) and all other applicable provisions of the NORTH CAROLINA NONPROFIT CORPORATION ACT, as the same now exists or may hereafter be amended, the Corporation shall indemnify all persons serving as officers or directors of the Corporation, or in both such capacities, against all liability and litigation expense, including but not limited to reasonable attorneys' fees, arising out of their status as such or their activities in any of the foregoing capacities, regardless of when such status existed or activity occurred and regardless of whether or not they are officers or directors of the Corporation at the time such indemnification is sought or obtained. Without limiting the generality of the foregoing indemnity, such persons may also recover from the Corporation all reasonable costs, expenses, and attorneys' fees in connection with the enforcement of rights to

indemnification granted by this Paragraph. The provisions of this paragraph are in addition to and not in limitation of the power of the Corporation with respect to, and the rights of any officer, director, employee or agent of the Corporation to receive the benefits of, any other or further indemnification, insurance, elimination of liability or other right or benefit which is either required by the NORTH CAROLINA NONPROFIT CORPORATION ACT or permitted thereby and duly adopted by the Corporation in accordance therewith.

8. ***PERSONAL LIABILITY OF DIRECTORS.*** The personal liability of each director of the Corporation is hereby eliminated to the fullest extent that elimination thereof is permitted by North Carolina General Statutes Section 55A-2-02(b)(4) and all other applicable provisions of the NORTH CAROLINA NONPROFIT CORPORATION ACT, as the same now exists or may hereafter be amended.

9. ***EFFECTIVE TIME OF FILING.*** Pursuant to North Carolina General Statutes Section 55A-1-23(a)(2), this document shall be effective at 12:00:01am on the date on which it is filed by the Office of the Secretary of State of North Carolina.

10. ***TAX STATUS; DISTRIBUTIONS.***

a. The Corporation shall have all of the powers granted non-profit corporations under the laws of the State of North Carolina. Notwithstanding any other provision in these Articles, the Corporation hereby elects tax exempt status under § 528 of the Internal Revenue Code of 1986, as amended.

b. No Director, Officer or employee of or member of a committee of or person connected with the Corporation, or any other private individual, shall receive at any time any of the earnings or pecuniary profit from the operations of the Corporation. This shall not prevent the payment to any such person of such reasonable compensation for services rendered to or for the Corporation in effecting any of its purposes as may be fixed by the Board of Directors from time to time. Further, no such person or persons shall be entitled to share in the distribution or winding up of the affairs of the Corporation, whether voluntary or involuntary.

In the event of a dissolution of the Corporation, whether voluntary or involuntary, the assets of the Corporation, after all debts have been satisfied, shall be distributed, transferred, conveyed, delivered and paid over, in such amounts as the Board may determine or as may be determined by a Court of competent jurisdiction, exclusively to an association organized for similar purposes as the Corporation.

11. **INCORPORATOR.** The incorporator shall perform the ministerial function of signing and submitting the Articles of Incorporation to the Office of the Secretary of State. The incorporator shall have no other power or duty regarding the corporation. The name and address of the incorporator is: John M. Harris, 304 North 35<sup>th</sup> Street, Morehead City, Carteret County, North Carolina 28557.

This the 29th day of December, 2023.

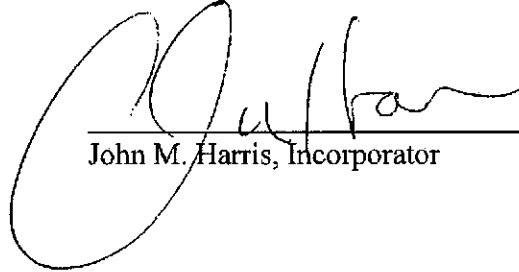
 (SEAL)  
\_\_\_\_\_  
John M. Harris, Incorporator



EXHIBIT B- LIMITED COMMON AREA BOAT SLIP ASSIGNMENT

Lot Number	Slip # Assigned as Limited Common Element
614 Unit A	1
614 Unit B	2
700 Unit A	3
700 Unit B	4
702 Unit A	5
702 Unit B	6
704 Unit A	7
704 Unit B	8
706 Unit A	9
706 Unit B	10
708 Unit A	11
708 Unit B	12
710 Unit A	13
710 Unit B	14
712 Unit A	15
712 Unit B	16
Unassigned as of date of this Declaration	17
Unassigned as of date of this Declaration	18

Slips 11-18 inclusive will have boatlifts installed by the Developer as part of the initial sale of the Unit. Slips 1-10 inclusive **will not** have Boat Lifts installed by the Developer but an individual owner may install a lift in these slips after receiving prior written approval from the Declarant or the Association of plans submitted for the lift.

Slips 17 and 18 will be assigned to a Lot owner(s) prior to the final sale of a lot in the development and such assignment shall be in a recordable form and filed at the Carteret County Register of Deeds office.

The utilities, including water and power for Slips 1-16 are connected to their respective units and the cost of such utilities are part of the utility bill for the assigned unit. In the event of assignment of these slips as provided in the Declaration, the parties must address the responsibility for payment of utilities provided to the slip.