

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE OLD 303 SUMMER REST SUBDIVISION**

*Prepared by:* \_\_\_\_\_

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE OLD 303 SUMMER REST  
SUBDIVISION**

THIS DECLARATION is made on the date hereinafter set forth by \_\_\_\_\_ having an office in New Hanover County, North Carolina, hereinafter referred to as "Declarant."

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in the County of New Hanover, State of North Carolina, which is more particularly described in Schedule "A," attached hereto and incorporated herein by this reference.

WHEREAS, it is the intent of the Declarant hereby to cause the above-described property to be subjected to this Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, such real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. It is the intent of Declarant that the provisions of this Declaration in all respects conform and comply to the requirements set forth in the North Carolina Planned Community Act. To the extent any provision contained herein does not conform or comply with the North Carolina Planned Community Act, the provisions of the Act shall control.

**ARTICLE I  
DEFINITIONS**

**SECTION 1. Appropriate Local Governmental Authority.** "Appropriate Local Governmental Authority" shall mean and refer to the City of Wilmington, New Hanover County or other appropriate local governmental authority having jurisdiction over the Properties.

**SECTION 2. Association.** "Association" shall mean and refer to The Old 303 Owner's Association, Inc., its successors and assigns.

**SECTION 3. Boat Dock Facility.** "Boat Dock Facility" shall mean the boat dock facility located upon, within or adjacent to the Common Elements and upon, within or adjacent to navigable waters, including all docks, gazebos, bulkheads, piers, revetments and related improvements creating the Boat Slips.

SECTION 4. Boat Slip. "Boat Slip" shall mean a space, within the Boat Dock Facility, in and above the water adjacent to the Atlantic Intracoastal Waterway, New Hanover County, North Carolina, for the docking of a boat, as more particularly shown on the Master Plan.

SECTION 5. Common Elements or Common Area. "Common Elements" or "Common Area" shall mean the Boat Dock Facility and all real property owned or leased by or allocated to the Association (whether owned in fee or by way of license or easement) or leased by the Association, other than a Lot. The Common Elements to be owned by or allocated to the Association at the time of the conveyance of the first Lot is described as follows:

All of the land designated as "Easement for Ingress, Egress and Regress and Now Dedicated for Utility Purposes" and "Proposed New Easement for Utilities and Ingress, Egress and Regress", "Pier", "Floating Dock", and "Dock" located on, adjoining or abutting, Tract # 2 as shown on the plat entitled Map of Survey For William H. Salling, Jr. and wife, Gail F. Salling recorded in Map Book \_\_\_\_, Page \_\_\_\_\_ in the Office of the Register of Deeds, New Hanover County, North Carolina.

Together with all riparian and littoral rights incident thereto.

Declarant reserves the right, in its sole discretion, to convey or cause to be conveyed to the Association from time to time and without the consent of the Association or its Members, additional property to the Association (the "Additional Property"), which property may include any portion of the Properties, including any Additional Property annexed by Declarant pursuant to Article X, Section 4 hereof. The Association shall accept any such conveyance of property together with any local, state or federal governmental permits relating to such property, including, without limitation, any stormwater, erosion control or wetlands permits, and thereafter such property shall be held and maintained by the Association as Common Elements. Declarant may construct or cause to be constructed (**BUT SHALL NOT BE OBLIGATED TO CONSTRUCT**) walkways and related facilities on any such Common Elements. Other improvements, which may include, but shall not be limited to, roadways, retention or detention ponds or erosion control devices, may be located on any such Common Elements. Declarant does contemplate the construction of the Boat Dock Facility and related recreational improvements or amenities within the Common Elements as noted on the Master Plan. Except as otherwise provided in Section 47F-3-113 of the Planned Community Act, the Association shall be required to promptly repair and replace any portion of the Common Elements for which the Association is required to maintain casualty insurance pursuant to the Bylaws of the Association which is damaged or destroyed. All Common Elements shall be conveyed to the Association in their "as is" condition without any express or implied warranty. [DECLARANT HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE COMMON ELEMENTS.]

The Association also may acquire additional Common Elements with the consent of the Members of the Association; provided, however, during Declarant's Development Period no such action shall be effective without Declarant's consent and approval. For such a conveyance to be effective, the deed or instrument conveying to the Association additional Common Elements must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an

attestation by the officers executing the instrument on behalf of the Association that the requisite owner and Declarant approval has been obtained and is evidenced by written acknowledgments signed by the owners approving the amendment and if required, Declarant, and that such acknowledgments are made a part of the minute book of the Association; and (3) be properly recorded in the New Hanover County Registry.

SECTION 6. Declarant. "Declarant" shall mean and refer to William H. Salling, Jr. and wife, Gail F. Salling, as well as their heirs, personal representatives and assigns, pursuant to an express assignment or conveyance of any special declarant rights hereunder to such successor or assign, all of which rights, including Declarant's voting, architectural review, easement and development rights, shall be assignable and may be apportioned on a lot-by-lot basis.

SECTION 7. Declarant's Development Period. "Declarant's Development Period" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, New Hanover County, North Carolina, and continuing for so long as Declarant shall have the right to annex any portion of the Additional Property pursuant to the provisions of Article X, Section 4 hereof or Declarant or any affiliate of Declarant shall own any portion of the Properties.

SECTION 8. Limited Common Elements. "Limited Common Elements" shall mean and refer to those portions of the Common Elements primarily benefiting one or more, but less than all, of the Lots, as more particularly described in Article II.

SECTION 9. Lot or Lots. "Lot" or "Lots" shall mean and refer to Tract 1, and Tract 2 on that plat entitled "Map of Survey For William H. Salling, Jr. and wife, Gail F. Salling" recorded in Map Book \_\_\_, Page \_\_\_, in the Office of the Register of Deeds of New Hanover County, North Carolina, and any other separately numbered plot of land shown upon any now or subsequently recorded subdivision plat of the Properties intended for single family residential purposes and shall include any improvements constructed thereon and "Lots" shall refer to all such tracts collectively. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant and to hereby create additional Lots, eliminate existing Lots or create additional Common Elements; provided, however, in no event shall the Properties contain a greater number of Lots than the number from time to time permitted by the Appropriate Local Governmental Authority, nor shall any Lot within the Properties contain fewer square feet than the minimum number of square feet from time to time required by the Appropriate Local Governmental Authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

SECTION 10. Master Plan. "Master Plan" shall mean and refer to the plan(s) for the Boat Dock Facility and Boat Slips, attached hereto as Schedule "B" now or hereafter approved by the Appropriate Local Governmental Authority, as such plan(s) may be from time to time amended and approved.

SECTION 11. Member. "Member" shall mean and refer to every person or entity who holds Membership with voting rights in the Association.

SECTION 12. Owner. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 13. Period of Declarant Control. "Period of Declarant Control" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, New Hanover County, North Carolina, and continuing for so long as Declarant or any affiliate of Declarant shall own any portion of the Properties. In the event that Declarant ceases to own any of the Properties but thereafter annexes Additional Property to this Declaration, the Period of Declarant Control shall be reinstated until Declarant shall again cease to own any of the Properties.

SECTION 14. Planned Community Act. "Planned Community Act" shall mean and refer to the provisions of Chapter 47F of the General Statutes of North Carolina.

SECTION 15. Properties. "Properties" shall mean and refer to all of the property hereby or hereafter made subject to the terms, covenants and conditions of this Declaration, as amended from time to time.

## ARTICLE II PROPERTY RIGHTS

### SECTION 1. RECREATIONAL AMENITIES WHICH MAY BE LOCATED IN THE COMMON ELEMENTS.

Declarant hereafter may construct or cause to be constructed (**BUT SHALL NOT BE OBLIGATED TO CONSTRUCT**) walkways and related driveways, parking, the Boat Dock Facility and other facilities on a portion of the Common Elements.

Declarant does not contemplate the construction of any other recreational improvements or amenities within the Common Elements.

Pursuant to rules and regulations from time to time promulgated by the Association, upon request and after such notice as the rules and regulations may require, the Association, in the sole discretion of the Association's Executive Board or its designee, may allow a Member of the Association exclusive use of all or certain portions of any Common Elements for private events for a period not to exceed twenty-four (24) hours. Such rules and regulations may require that fees and/or deposits be paid to the Association in connection with such exclusive private use. Any damage to the Common Elements or any improvements located thereon during any such private event and any liability incurred by the Association as a result thereof not covered by insurance maintained by the Association (including any

deductible) shall be the personal obligation of the Member or Members (joint and several) reserving the Common Elements and if not paid within thirty (30) days of written demand therefor shall be subject to collection by the Association in accordance with the provisions of Article X hereof.

**SECTION 2. RULES AND REGULATIONS.** The Executive Board of the Association may establish reasonable rules and regulations concerning the use of the Common Elements and improvements located thereon. The initial rules are attached hereto as Schedule C and incorporated herein by reference. Such rules and regulations may prohibit or restrict the use of the Common Elements, Limited Common Elements, Boat Dock Facilities and Boat Slips. The Association may impose reasonable monetary fines and other sanctions for the violation of established rules and regulations and for the violation of any of the covenants and conditions contained in this Declaration, which monetary fines and sanctions shall be assessed and collected pursuant to the provisions of Articles IV and X hereof. Copies of such rules and regulations and the amendments thereto shall be furnished by the Association to all owners prior to the effective date thereof. All such rules and regulations shall be binding upon the owners, their families, tenants, guests, invitees and agents until and unless such regulation, rule or requirement shall be specifically overruled, canceled, or modified by the Executive Board of the Association or by the Members of the Association entitled to cast at least two-thirds (2/3) of the votes of the Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during any Period of Declarant Control, Declarant must also consent to such action.

**SECTION 3. OWNERS' EASEMENTS OF ENJOYMENT.** Every Owner shall have a right and easement of enjoyment in and to the Common Elements, including the rights to exclusive use of those portions of the Common Elements designated as Limited Common Elements, as described herein, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the easements herein reserved by Declarant or created in favor of the Association, including, without limitation the easements set forth in Article VIII hereof;

(b) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements;

(c) the right of the Association to suspend the voting rights by the Owner(s) of any Lot for any period during which any assessment against such Lot remains unpaid and for any period during which such Lot or any Owner or occupant thereof is in violation of the terms of this Declaration or the published rules and regulations of the Association and for a period not to exceed sixty (60) days after any such violation;

(d) the right of the Association to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Association's Executive Board; provided, however, no such dedication or transfer shall be effective unless an instrument

executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded;

(e) the right of the Association to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which regulations may further restrict the use of the Common Elements, and specifically including the right to make permanent and temporary assignments of parking spaces and to establish rules and regulations concerning parking and vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting the Properties which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicle's owner, by reasonable fine levied against the vehicle's owner and/or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Executive Board;

(f) the right of the Association to borrow money for the purpose of improving the Common Elements and facilities thereon and, with the assent of the Members entitled to cast at least eighty percent (80%) of the votes of the Association (including two-thirds of the votes of the Members present at a meeting of the Members held in accordance with the Bylaws of the Association, such vote including at least a majority of the votes of the Members present other than Declarant), mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association); provided, however, during Declarant's Development Period, Declarant must also consent to such action, and further provided that no such mortgage, encumbrance or hypothecation or foreclosure of the lien thereby created shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances; and

(g) the right of the Association to convey to Declarant portions of the Common Elements for the purpose of correcting erroneous conveyances of Common Elements or eliminating unintentional encroachments of dwellings or other improvements onto portions of the Common Elements or for the purpose of enhancing the utility of the Common Elements to be retained by the Association; provided, however, no such conveyance shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances.

**SECTION 4. DELEGATION OF USE.** Any Owner may delegate, in accordance with the Bylaws, such Owner's rights of enjoyment of the Common Elements and facilities to the members of such Owner's family, tenants or contract purchasers who reside on the Lot of such Owner.

**SECTION 5. LIMITED COMMON ELEMENTS.** The Limited Common Elements shall be those Boat Slips located within the Boat Dock Facility, as shown on the Master Plan,

and allocated to Lots as stated:

Lot 1 is allocated Boat Slip C and Boat Slip D.

Lot 2 is allocated Boat Slip A and Boat Slip B.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

**SECTION 1. MEMBERSHIP.** Every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including Declarant and any affiliated entity, shall be a voting Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Such Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Except as otherwise provided in Section 2 below, on all matters which the Membership shall be entitled to vote, the Member(s) owning each Lot shall be entitled to one (1) vote. When more than one person holds an interest in any Lot, all such persons shall be Members. 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.

**SECTION 2. CLASSES OF MEMBERSHIP.** The Association shall have two classes of voting membership:

**Class A:** The Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except for Declarant or any affiliated entity during any Period of Declarant Control. Class A Members shall be entitled to one (1) vote for each Lot owned. In the event that a Lot is owned by more than one Class A Member, the Owners of such Lot, collectively, shall be allocated not more than one (1) vote and the vote allocated to such Lot shall be cast as such Owners may agree between or among themselves.

**Class B:** Declarant shall be the Class B Member and Declarant shall be entitled to five (5) votes for each Lot as developed which has not been conveyed by Declarant or any affiliated entity to a Class A Member. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; however, the Class B membership shall be reinstated if thereafter, and before the time stated in subparagraph (b) below, the Master



Plan is amended to add additional lots developed sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to five (5) votes for each new lot shown on the Master Plan as developed or to be developed as a part of Summer Rest Road which has not been conveyed by Declarant or an affiliate of Declarant to a Class A Member) greater than those of the Class A membership; or,

(b) twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds, New Hanover County, North Carolina.

**SECTION 3. DECLARANT RIGHT TO REPRESENTATION ON THE EXECUTIVE BOARD OF THE ASSOCIATION.** During any Period of Declarant Control, Declarant shall have the right to designate and select all of the Members of each Executive Board of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Executive Board of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Executive Board and to replace such person or persons with another person or other persons to act and serve in the place of any member or members of the Executive Board so removed for the remainder of the unexpired term of any member or members of the Executive Board so removed. Any Executive Board member designated and selected by Declarant need not be a resident of the Properties. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Executive Board which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

#### ARTICLE IV COVENANT FOR MAINTENANCE AND ASSESSMENTS

**SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay: (a) to the Association: (i) annual and other assessments and charges provided for herein, together with interest, and late fees, costs and reasonable attorney's fees; (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied against the Common Elements; and (ii) a pro rata share of assessments for public improvements to or for the benefit of the Common Elements if the Association shall default in the payment of either or both for a period of six (6) months. All assessments and charges provided for herein, together with interest, and late fees, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made when a claim of lien is filed of record in the Office of the Clerk of Superior Court, New Hanover County, North Carolina. Each such assessment and charge, together with interest, any late fees, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall

not pass to such Owner's successors in title unless expressly assumed by them.

## SECTION 2. PURPOSE OF ASSESSMENTS.

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements or the Lots, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of any taxes and assessments assessed against the Common Elements, the payment of assessments assessed against the Common Elements and any improvements thereupon; the payment of utilities, garbage collection, municipal water, and services used on or exclusively benefitting the Common Elements; the procurement and maintenance of insurance in accordance with the Bylaws; the maintenance and dredging of creeks, channels, watercourses, and other areas serving the Boat Slips and Common Elements; the performance of any other maintenance or repair obligations of the Association under this Declaration; the erection, maintenance and repair of signs, entranceways, landscaping and lighting within easements provided therefor or the Common Elements; s; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and such other needs as may arise. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Elements and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense. The Association shall periodically dredge the area of Wrightsville Sound, and the waters abutting the Boating Facility, such that the depth of all Boat Slips and any service channel shall be no shallower than four (4) feet at mean low water. Any such dredging shall be in compliance with and pursuant to all permits and approvals of CAMA

(b) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and Common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer such Owner's Membership interest therein, except as an appurtenance to such Owner's Lot. When any Owner shall cease to be a Member of the Association by reason of such Owner's divestment of ownership of such Owner's Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an

asset of the Association which may be used in the operation and management of the Properties.

SECTION 3. ADOPTION OF BUDGET AND FIXING OF ANNUAL ASSESSMENTS; MAXIMUM ANNUAL ASSESSMENT.

(a) At least thirty (30) days in advance of each annual assessment period, the Executive Board shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. Within thirty (30) days of the adoption of any proposed budget, the Executive Board shall provide to all of the Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Executive Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting the Owners of a majority of the Lots reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

(b) Until December 31 of the year of the conveyance of the first Lot to an Owner, the maximum annual assessment shall be THREE THOUSAND SIX HUNDRED and No/100 Dollars (\$3,600.00) per Lot, and may be collected in monthly installments of THREE HUNDRED and No/100 Dollars (\$300.00) per Lot. The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter shall be established by the Executive Board and may be increased by the Executive Board without approval by the Membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year. The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased without limit by a vote of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose; provided, however, during any Period of Declarant Control, Declarant must also consent to such action.

(c) The Executive Board may fix the annual assessment at an amount not in excess of the maximum, subject to the provisions of Section 6 of this Article.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs of any 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 the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose; provided, however, during the Declarant's Development Period, Declarant must also consent to such action. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast ten percent (10%) of all the votes of each class of Members of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half(½) of the required quorum at the preceding meeting. The required quorum shall continue to be reduced by fifty percent (50%) at subsequent meetings until a quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6. RATE OF ANNUAL ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or annual basis, except that the Declarant shall not be obligated to pay any annual or special assessments for any Lot owned by Declarant within the Properties.

SECTION 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the date such Lot is conveyed to an Owner other than Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due dates shall be established by the Executive Board. 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.

SECTION 8. WORKING CAPITAL ASSESSMENTS. In addition to the annual assessments authorized above, at the time of the closing of the first sale of each Lot to a purchaser (other than Declarant or a successor declarant), the purchaser(s) thereof shall pay to the Association an amount equal to two-twelfths (2/12ths) of the then current annual assessment established by the Association. Such funds shall be used by the Association to establish a Working Capital Fund, the purpose of which is to help insure that the Association will have sufficient monies available to meet its initial operational needs, unforeseen expenditures or long-term capital improvements and repairs to the Common Elements. No such payments made into the Working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of the Declaration and these Bylaws.

SECTION 9. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate from time-to-time established by the Association not to exceed eighteen percent (18%) per annum. In addition, the Association may charge a reasonable late fee, the amount of which shall be established from time to time by the Executive Board of the Association [but which shall not exceed the greater of Twenty Dollars (\$20.00) per month or ten percent (10%) of any assessment unpaid], for assessments not paid within thirty (30) days after the due date. In addition, after notice and an opportunity to be heard, the Association may suspend privileges or services provided by the Association (except rights of access to Lots) during any

period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer, which suspension may continue without further hearing until the delinquency is cured. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner that real estate deeds of trust and mortgages may be foreclosed under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, and in any suit for the foreclosure of said lien, the Association shall be entitled to interest, any late fees, costs and reasonable attorneys' fees, subject to the limitations set forth in this paragraph. Notwithstanding any of the foregoing, the Association may not foreclose an assessment lien under power of sale if the debt securing the lien consists solely of fines imposed by the Association, interest on unpaid fines, or attorneys' fees incurred by the Association solely associated with fines imposed by the Association, but such a lien may be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes. An Owner may not be required to pay attorneys' fees and court costs until the Owner is notified in writing of the Association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, the mailing address for the Owner in the Association's records. The notice shall (i) set out the outstanding balance due as of the date of the notice, (ii) state that the Owner has fifteen (15) days from the mailing of the notice to pay the outstanding balance without the attorneys' fees and court costs, and (iii) inform the Owner of the opportunity to contact a representative of the Association to discuss a payment schedule for the outstanding balance and provide the Owner the name and telephone number of such representative. If the Owner pays the outstanding balance within this period, then the Owner shall have no obligation to pay the attorneys' fees and court costs. If the Owner does not contest the collection of debt and enforcement of a lien after the expiration of the fifteen (15) day period, then reasonable attorneys' fees shall not exceed One Thousand Two Hundred Dollars (\$1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remains uncontested as long as the Owner does not dispute, contest, or raise any objection, defense, offset or counterclaims as to the amount or validity of the debt and lien asserted or the Association's right to collect the debt and enforce the lien. The attorneys' fee limitation shall not apply to judicial foreclosures. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Elements or abandonment of such Owner's Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

**SECTION 10. EFFECT OF DEFAULT IN PAYMENT OF ADVALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION.** Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Elements or assessments for public improvements to the Common Elements, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, such Owner's heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect

to foreclose the lien against the Lot of the Owner.

SECTION 11. PRIORITY OF LIEN. The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the Office of the Clerk of Superior Court of Guilford County, North Carolina, in the manner provided herein, which claim shall state the description of the Lot encumbered thereby, the name of the record owner(s), the amount due and the date when due and the name and address of the Association. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien it shall be satisfied of record.

SECTION 12. EXEMPT PROPERTY. All property dedicated to, and accepted by, a public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE V ARCHITECTURAL CONTROL

SECTION 1. IMPROVEMENTS. No improvements, alteration, repair, change in paint color, excavation, change in grade, planting, landscaping, exterior decoration (including, without limitation, yard ornaments, figurines, statues, bird baths, houses and feeders, flags and similar items) or other work which in any way alters the exterior of any Lot or the improvements located thereon from their natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant or an affiliate of Declarant to an Owner other than Declarant or an affiliate of Declarant, shall be commenced, erected or maintained upon any Lot and no building, fence wall, residence or other structure shall be commenced, erected, maintained, improved, altered or removed, 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 Executive Board of the Association (the "Executive Board"). Notwithstanding the foregoing, landscaping improvements within any Lot consisting of plant materials native to the area and commonly used in residential landscaping which do not interfere with the sight lines of motorists at intersections of the streets and/or driveways located within the Properties shall not require approval by the Executive Board of the Association. In addition, temporary seasonal exterior decorations shall not require the prior approval of the Executive Board, but if any such decorations are determined, in the sole discretion of the Executive Board, to be distasteful or otherwise disruptive of the aesthetics or visual harmony of the community, the Executive Board may require that such decorations promptly and permanently be removed. In the event that an Owner neglects or fails to remove any such decorations at the request of the Executive Board, the Association may provide such removal. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times for such purpose and the cost of such removal shall be added to and become a part of the assessment to which such Lot is subject. Notwithstanding the foregoing, nothing herein contained shall prevent or interfere with the right of Declarant or any affiliate of Declarant to improve and develop the Properties, including the Lots, as

Declarant or such affiliate chooses, so long as said development follows the general plan of development of the Properties from time to time approved by the Appropriate Local Governmental Authority. Accordingly, nothing herein shall require that either Declarant or any affiliate of Declarant seek or obtain the approval of the Executive Board for improvements erected on the Properties by or at the direction of Declarant or any such affiliate. In addition, for so long as Declarant or any affiliated entity owns any Lot or has the right to annex any Additional Property pursuant to Section 4(b), Article X hereof, Declarant or its affiliate may approve any plans and specifications rejected by the Executive Board for the construction or alteration of improvements on any Lot provided the construction or alteration approved by Declarant or its affiliate comport with the general scheme of development from time to time approved by the Appropriate Local Governmental Authority. Such approval by Declarant or its affiliate shall operate and have the same effect as approval by the Executive Board.

## SECTION 2. PROCEDURES.

(a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Executive Board which shall evaluate such plans and specification in light of the purposes of this Article.

(b) Upon approval by the Executive Board of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specification, as approved, shall be deposited for permanent record with the Executive Board and a copy of such plans and specification bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specification shall not be deemed a waiver of the Executive Board's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot. Approval of any such plans and specification relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specification, as approved, and any conditions attached to any such approval. As a condition to the granting of approval of any request made under this Article, the Association may require that the Owner(s) requesting such change be liable for any cost of maintaining, repairing and insuring the approved alteration. If such condition is imposed, the Owner(s) shall evidence consent thereto by a written document in recordable form satisfactory to the Association. Thereafter, the Owner(s), and any subsequent Owner(s) of the Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to covenant and agree that the cost of maintaining, repairing and insuring such alteration shall be a part of the annual assessment or charge set forth herein, and subject to the lien rights described herein.

(c) Neither Declarant, nor any other member of the Association's Executive Board, shall be responsible or liable in any way for any defects in any plans or specification approved by them, nor for any structural defects in any work done according to such plans and specifications. Further, neither Declarant, nor any member of the Association's Executive Board, shall be liable in damages to anyone by reason of mistake in judgment, negligence,

misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specification or the exercise of any other power or right provided for in this Declaration nor for any approvals or permits required from any governmental or other entity. Every Person who submits plans or specifications for approval agrees, by submission of such plans and specifications, and every owner of any Lot agrees, that he or she will not bring any action or suit against Declarant, or any member of the Association's Executive Board, to recover any such damage.

## ARTICLE VI EXTERIOR MAINTENANCE

**SECTION 1. MAINTENANCE TO BE PERFORMED BY THE ASSOCIATION.** The Association shall maintain the Common Elements, open spaces, sidewalks, Boat Dock Facility, Limited Common Elements and easements within the Common Elements. Without limiting the foregoing, the Association shall maintain rip rap and other drainage or erosion control devices located on the Common Elements now or hereafter conveyed to the Association by Declarant that are required to be maintained by the governmental office(s) having jurisdiction for watershed protection as directed by such governmental office(s). In the event the Association is dissolved or otherwise defaults on its obligation to maintain any such drainage or erosion control device, Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of such pond or erosion control device.

**SECTION 2. MAINTENANCE TO BE PERFORMED BY THE OWNERS.** Each Owner shall be responsible for the exterior maintenance of such Owner's dwelling and Lot, including, without limitation, the following: painting, replacement and care of roofs, gutters, downspouts, exterior building surfaces, lawn, trees, shrubs, landscaping, driveways, steps, walks and other exterior improvements. Each Owner shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all utility lines, fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to such Owner's Lot which are not publicly maintained.

### **SECTION 3. ASSIGNMENT OF PERMITS/DREDGING.**

A. Declarant has obtained certain permits and installed various permitted systems within the subdivision during the course of developing the Property. Declarant shall assign, and the Association shall assume any such permits and systems, whether or not specifically listed hereinabove. The Association shall, within ten days of a request by Declarant, accept the assignment and assume such permits and systems. Such obligation to accept assignment of such Permits and systems shall not be subject to the results of any inspections, analyses or reports. After such an assignment, the Association shall be responsible for and assume all duties, obligations, and rights and privileges of the Declarant under such permits, agreements and easements, including all maintenance responsibility, even if part of the water, sewer, land use, stormwater system or utility areas covered by the permits, agreements and easements are not located within the Properties.



## ARTICLE VII RESTRICTIONS

**SECTION 1. LAND USE.** No Lot shall be used except for single-family residential purposes; provided, however, Declarant, or any affiliated entity may use any Lot owned or leased by Declarant or any affiliated entity as a temporary sales office and/or model for the purposes of carrying on business related to the development, improvement and sale of the Properties or the Additional Property. No buildings shall be erected, placed or permitted to remain on any Lot other than one (1) detached single-family dwelling not to exceed 2 stories in height, an optional attached private garage for not more than three (3) cars, and not more than two (2) permanent accessory buildings, which may be used as guest dwellings. Notwithstanding the foregoing, any such permanent accessory building must be erected on a permanent foundation and must be constructed on the Lot (as opposed to a pre-fabricated building) in accordance with the approval of the Architectural Control Committee as provided in Article V of this Declaration and comply with all applicable codes and regulations of any appropriate governmental entity.

**SECTION 2. NUISANCE.** No noxious or offensive activity shall be conducted upon any Lot or the Common Elements nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. In the event that any Lot Owner or any other person conducts obnoxious or offensive activity upon any Lot or does anything thereon which may be or may become an annoyance or nuisance to the neighborhood, a written complaint can be filed by a Lot Owner with the Association. If after investigation the Complaint is deemed legitimate by the Association, the Association will make a written request to the owner of the Lot upon which the activity is being conducted that the obnoxious or offensive activity be stopped immediately. If the activity continues for two days after this written notice is issued by the Association, any complaining Lot Owner can pursue judicial relief against the offending Lot Owner or the offending person. All Lot Owners expressly waive any claims against Declarant related to any obnoxious or offensive activity conducted upon any Lot or relating to anything done upon any Lot which may be or may become an annoyance or nuisance to the neighborhood, except to the extent that the alleged obnoxious or offensive activity is conducted by the Declarant or the Declarant's agent. No Lot or other area within Properties shall be used as a dumping ground for rubbish or as a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment and discarded appliances and furniture. No outdoor clotheslines shall be permitted.

**SECTION 3. SIGNS.** No sign shall be placed or allowed to remain on any Lot except for ONE (1) "For Sale" sign, or one other temporary sign to advertise a yard sale or other temporary activity on the Lot and such other temporary sign shall not be permitted to remain on any Lot for more than seventy-two (72) consecutive hours. No sign deemed by the Association, the Executive Board or Declarant to be a nuisance or a detriment to the Properties or the Additional Property shall be permitted to be erected or to remain on any Lot. Notwithstanding the foregoing, during Declarant's Development Period, Declarant and any affiliate shall have the right to erect and maintain signs within the Common Elements or on any Lot owned or leased by Declarant or such affiliate for the purpose of advertising and promoting

the sale of such lots.

SECTION 4. MOBILE HOMES, MANUFACTURED HOMES, ETC. No mobile home, manufactured home, modular home, trailer, or other like structure shall be located or installed on any Lot. As used in this Section, mobile home, manufactured home or modular home shall mean a structure, assembled in whole or in part in a location other than on the Lot itself, transportable in one or more sections, any section of which, during transport, is four (4) feet or more in width and ten (10) feet or more in length, which may or may not be built on a permanent chassis and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. Notwithstanding the foregoing, Declarant, builders or contractors may maintain temporary improvements (such as a sales office and/or construction trailer) on any Lot during the construction and development period.

SECTION 5. FENCES OR WALLS. No fence, wall or other enclosure shall be constructed on any Lot without first obtaining the approval of the Architectural Control Committee as provided in Article V of this Declaration. No fence on any Lot shall be permitted to extend nearer to any front street than the back building line of the residence located on that Lot or nearer to any side street than the side building line of the residence located on that Lot. No portion of any fence erected on any Lot may exceed six (6) feet in height and chain link fences are not permitted. Notwithstanding the foregoing, Declarant, its successors and assigns, and the Association shall have the right to erect chain link fences and any other type of fences and enclosures within the Common Elements to enclose retention ponds and for other purposes without the approval of the Architectural Control Committee, such fences and other enclosures to become a part of the Common Elements to be maintained by the Association.

SECTION 6. DOCKS AND PIERS. No piers, dock structures, or mooring mechanisms shall be erected, installed, or maintained from Tract 2 as shown on the map entitled Map of Survey For William H. Salling and wife, Gail F. Salling and recorded in Map Book \_\_\_\_ Page \_\_\_\_ of the New Hanover County Registry, extending into the waters of Wrightsville Sound, the Atlantic Intracoastal Waterway, or any adjoining body of water.

## ARTICLE VIII EASEMENTS

SECTION I. UTILITIES. Easements for installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as indicated on recorded plats. In addition, Declarant reserves, for itself and the Association, additional easements over Tract 2 in those areas identified as "Easement for Ingress, Egress and Regress and Now Dedicated for Utility Purposes" and "Proposed New Easement for Utilities and Ingress, Egress and Regress" as shown in Map Book \_\_\_\_, Page \_\_\_\_\_, in the Office of the Register of Deeds of New Hanover County, North Carolina for the installation and maintenance of utilities (including cable television service) and drainage facilities Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels

in the easements. An easement is hereby established for the benefit of the appropriate governmental entity (and any other person or firm providing services to the Properties under agreement with or at the direction of the Association) over all Common Elements as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Association shall have the power and authority to grant and establish upon, over and across the Common Elements such additional easements as are necessary or desirable for the providing of service or utilities to the Common Elements or Lots.

**SECTION 2. EASEMENT RESERVED BY DECLARANT.** Declarant hereby reserves such easements on, across and over the Common Elements as shall be reasonably necessary for (i) the exercise by Declarant or any affiliated entity of any right herein reserved, including, without limitation, Declarant's right, should Declarant elect, to annex the Additional Property, as hereinafter defined and (ii) the development by Declarant or any affiliate, their respective successors and assigns, of the Additional Property, should Declarant elect not to annex the Additional Property, including without limitation easements for ingress, egress and regress over private roads and streets now or hereafter erected on the Properties and easements for the use of all utility lines, fixtures and/or their connections located within the Common Elements for the purpose of providing water, light, power, telephone, sewage and sanitary service to the Additional Property.

**SECTION 3. ENCROACHMENTS.** In the event that any improvements on a Lot shall encroach upon any Common Elements or upon any other Lot as a result of the initial improvements constructed by Declarant or for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Elements or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Elements into any such Lot for so long as such encroachment shall naturally exist.

**SECTION 4. COMMON ELEMENTS.** Declarant reserves, for itself and the Association, an easement for unobstructed access over, on, upon, through and across the Common Elements and any Limited Common Elements, at all reasonable times to purposes of inspecting any construction, proposed construction, or improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance, and repair of Declarant or Association, as appropriate. Such easement includes an easement in favor of the Association to enter upon the Common Elements now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter redesignated or as Declarant otherwise determines them to be reasonably suited.

## ARTICLE IX RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

**SECTION 1. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS.**  
"Institutional Lender" as the term is used herein shall mean and refer to banks, savings and

loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

**SECTION 2. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS.**

So long as any Institutional Lender shall hold any first lien upon any Lot and shall have given notice to the Association as set forth in Section 3 of this Article, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Executive Board of the Association, such financial statement or report to be furnished by April 15 of each calendar year.

(b) To be given notice by the Association of the call of any meeting of the Membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or Bylaws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association.

(c) To receive notice of any condemnation or casualty loss affecting the Common Elements or any portion thereof.

(d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(e) To be given notice by the Association of any proposed alienation, release, transfer, hypothecation or other encumbrance of the Common Elements, other than those specific rights vested in the Association under Article II hereof.

(f) To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

**SECTION 3. REQUIREMENTS OF INSTITUTIONAL LENDER.**

Whenever any Institutional Lender desires to avail itself of the provisions of this Declaration, it shall furnish written notice thereof to the Association by CERTIFIED MAIL at the address shown in the Articles of Incorporation identifying the Lot or Lots upon which any such Institutional Lender holds any first lien or identifying any Lot or Lots owned by such

Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

## ARTICLE X GENERAL PROVISIONS

**SECTION 1. ENFORCEMENT.** The Owner(s) of each Lot shall be governed by and shall comply with the provisions of this Declaration, the Bylaws of the Association and all rules and regulations of the Association adopted pursuant thereto, as any of the same are now constituted or as they may be amended from time to time. A default by any Owner shall entitle the Association or the Owner(s) of any of the other Lots to the following relief:

(a) The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws of the Association and all rules and regulations of the Association adopted pursuant thereto. Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the Bylaws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including without limitation an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

(b) The Association, after notice to the Owner and a reasonable opportunity to be heard, shall have the right to assess reasonable fines against an Owner for violations of this Declaration the Bylaws of the Association or the Association's published rules and regulations by such Owner, or such Owner's family, guests, invitees and lessees in an amount not to exceed \$100.00 for each violation, and without further hearing, for each day more than five (5) days after the decision that the violation occurs. Such fines shall be deemed to be assessments as set forth in Article IV of the Declaration and if not paid within thirty (30) days after notice and demand therefor, the Association shall be entitled to the remedies set forth in the Declaration for the enforcement and collection of delinquent assessments.

(c) The Association, after notice to the Owner and a reasonable opportunity to be heard, shall have the right to suspend privileges or services provided by the Association (except rights of access to Lots) for reasonable periods for violations of this Declaration or the Bylaws, Articles or rules and regulations of the Association. If it is decided that a suspension of privileges or services provided by the Association should be imposed, the suspension may be continued without further hearing until the violation is cured.

(d) If an Owner is legally responsible for damage inflicted on any Common Elements, the Association may direct such Owner to repair such damage, or the Association may itself cause the repairs to be made and recover damages from the responsible Owner. If damage is inflicted on any Lot by an agent of the Association in the scope of the agent's activities as such agent, the Association is liable to repair such damage or to reimburse the Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Owner. When any such claim for damages against an Owner or the Association is less than or equal to the

jurisdictional amount established for small claims by North Carolina General Statute 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the Executive Board of the Association to determine if an Owner is responsible for damages to any Common Elements or the Association is responsible for damages to any Lot. Liability for each damage incident may be assessed against each Owner charged or against the Association not in excess of the jurisdictional amount established for small claims by North Carolina General Statute 7A-210. When the such claim exceeds the jurisdictional amount established for small claims by North Carolina General Statute 7A-210, liability of any Owner charged or the Association shall be determined as otherwise provided by law. Liabilities of Owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by lien under Section 47F-3-116 of the Planned Community Act. Liabilities of the Association determined by adjudicatory hearing or as otherwise provided by law may be offset by the Owner against sums owing to the Association and if so offset, shall reduce the amount of any lien of the Association against the Lot at issue.

(e) Adjudicatory proceedings pursuant to subparagraphs (b), (c) and (d) of this Section 1 may be held before the Executive Board or an adjudicatory panel appointed by the Executive Board. The Executive Board and any adjudicatory panel appointed by the Executive Board shall accord to the party charged pursuant to subparagraphs (b), (c) and/or (d) above notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. Any adjudicatory panel appointed by the Executive Board shall be composed of Members of the Association who are not officers of the Association or members of the Executive Board. An Owner may appeal the decision of an adjudicatory panel to the full Executive Board by delivering written notice of appeal to the Executive Board within fifteen (15) days after the date of the decision. The Executive Board may affirm, vacate, or modify the prior decision of the adjudicatory body.

(f) In any proceeding arising because of an alleged default by a Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.

(g) The failure of the Association or any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Association or of the Owner to enforce such right, provision, covenant or condition in the future.

(h) All rights, remedies and privileges granted to the Association or the Owners, pursuant to any terms, provisions, covenants or conditions of the Declaration or other above mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

(i) The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or other above-mentioned document shall not constitute a waiver of the right of Declarant to thereafter enforce such right,

provision, covenant or condition in the future.

**SECTION 2. SEVERABILITY.** Invalidation of any one of the covenants or restrictions by judgment or court order shall not affect any other provision which shall remain in full force and effect.

**SECTION 3. AMENDMENT.** The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated as hereinafter provided. This Declaration may be terminated or amended with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of the Association; provided, however, during Declarant's Development Period, this Declaration may not be amended or terminated without Declarant's consent; no amendment purporting to revoke or curtail any right herein conferred to Declarant shall be effective unless executed by Declarant; and no amendment relating to the maintenance or ownership of any permanent detention or retention pond shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection. Any amendment, except amendments that Declarant is authorized to make unilaterally, must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the amendment on behalf of the Association that the requisite Owner and Declarant approval has been obtained and is evidenced by written acknowledgment(s) signed by the Owners approving the amendment and, if required, Declarant, and that such acknowledgments have been made a part of the Minute Book of the Association; and (3) be properly recorded in the Office of the Register of Deeds, New Hanover County, North Carolina. For the purpose of this section, additions to existing property by Declarant pursuant to Section 4 of this Article shall not constitute an "amendment." In the event this Declaration is terminated in accordance with the provisions hereinabove provided, Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of all permanent retention or detention ponds. Notwithstanding the foregoing, Declarant may at any time unilaterally amend this Declaration to terminate or restrict any right reserved hereunder by Declarant and Declarant, during Declarant's Development Period, may unilaterally amend this Declaration to make any changes required by the Veterans Administration ("VA") the Department of Housing and Urban Development ("HUD"), the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation "FHLMC") or any other private or governmental insurer of residential mortgage loans in order to obtain the approvals necessary for purchasers of Lots to obtain financing insured by any of the foregoing mortgage insurers, or to make any changes deemed by Declarant to be necessary to carry out and effectuate the orderly development of the Properties as intended by Declarant.

**SECTION 4. ANNEXATION.**

(a) Except as provided in Subsection (b) of this Section 4, Article X, additional residential property and Common Elements may be annexed to the Properties only with the consent of the Members entitled to cast two-thirds (2/3) of the votes each class of Members of the Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during the Declarant's Development Period, Declarant must also consent to such

action.

All or any portion of the Additional Property may be annexed by the Declarant without the consent of Members within ten (10) years of the date of this instrument. Declarant shall have no obligation of any kind to annex any or all of the Additional Property and, should Declarant elect to annex all or any portion of the Additional Property, Declarant shall have no obligation of any kind to annex the Additional Property in any particular sequential order. Should Declarant elect to annex all or any portion of the Additional Property and accordingly to subject such property to the terms and conditions of this Declaration, with regard to all or any part of the Additional Property annexed by Declarant, Declarant reserves the right to make such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration (including, without limitation, those contained in Section 2 of Article VII hereof) as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such additions and/or modifications shall have no effect upon the properties previously subjected to this Declaration. With regard to any portion of the Additional Property not annexed by Declarant, Declarant makes no representations with regard to the use of such property or the exterior appearance, design, size or intended purpose of any improvements now or hereafter erected on such property.

**SECTION 5. AMPLIFICATION.** The Provisions of this Declaration are amplified by the Articles of Incorporation and Bylaws of the Association; but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles of Incorporation and Bylaws of the Association on the other be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything contained in the Articles of Incorporation or Bylaws of the Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have executed this instrument under seal as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_(SEAL)  
William H. Salling, Jr.

\_\_\_\_\_(SEAL)  
Gail F. Salling



STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina do certify that on this \_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared

\_\_\_\_\_

\_\_\_\_\_ personally known to me;  
\_\_\_\_\_ proved to me by satisfactory evidence \_\_\_\_\_;  
\_\_\_\_\_ proved to me on the oath or affirmation of \_\_\_\_\_ who is  
\_\_\_\_\_ personally known to me,

to be the person(s) whose name(s) is/are signed on the preceding or attached record, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

(Seal)

My Commission expires: \_\_\_\_\_

**SCHEDULE A**

**DECLARANT PROPERTY**

**SCHEDULE B**

**MASTER PLAN**

## **SCHEDULE C**

### **Initial Rules and Regulations**

*(Subject to amendment without further recording. Requests for current copies of Rules and Regulations should be directed to the Association.)*

## **RULES AND REGULATIONS OF THE OLD 303 OWNER'S ASSOCIATION, INC.**

### **INTRODUCTION**

As used herein, the word "Member" shall mean and refer to any Member of **THE OLD 303 OWNER'S ASSOCIATION, INC.** (the "Association") or, as the context may require, any assignee or user of any Member, and shall include the masculine, feminine, neuter, singular, or plural as the context shall require. All Members and their invited guests, as well as any other persons who might lawfully be entitled to use the facilities of the Association in any manner, shall be subject to the Declaration of Covenants, Conditions and Restrictions for Summer Rest Road (as amended or supplemented from time to time, the "Declaration"), the Bylaws of the Association (the "Bylaws"), and these Rules and Regulations.

Every Member shall be given a copy of these Rules and Regulations. Each Member shall insure that the Association is notified at or before the time that such Member begins the use and enjoyment of the Membership. Such notification shall include the full name of the user, his permanent address, telephone number, electronic mail address (and/or contact information for such other electronic means of communication as the Association may require), and the name, official number or North Carolina registration of the boat authorized by the Member to dock in his Boat Slip. Each Member is authorized under these regulations and should:

1. Warn any person who is observed to be violating the rules;
2. Call security or law enforcement to oust possible trespassers who do not identify themselves upon a polite request; and
3. Call security or law enforcement to quell disorderly or criminal conduct by anyone.

Each Member should also notify the Board of Directors whenever he has to warn someone and shall supply the Board with the facts of the incident as soon as practicable.

Capitalized terms not otherwise defined herein shall have the meanings provided in the Declaration.

## BOAT DOCK FACILITY

1. **DOCKWAYS:** Docks are to be kept clear at all times. Lockers, chests, cabinets, or similar structures shall not be, constructed or placed on docks or finger piers, without written approval of the Association. Storage of loose material, supplies, debris, or gear is not permitted. Charcoal fires are not permitted on the docks. Repairs to and maintenance of gear and equipment shall not be permitted on the docks or finger piers.
2. **BOAT SLIP CONDITION:** The Member shall keep and maintain that Member's Boat Slip in a clean, attractive, safe, and sanitary condition at all times. The Member shall not install fixtures upon or make modifications to the slip, dock area, or utility services without the prior written consent of the Association. No Member shall cause, create, or allow any condition at or upon his slip which in appearance, sound, smell or otherwise might constitute a nuisance to the Association and/or the other Members.
3. **FINGER PIERS AND PRIVATE GANGWAYS:** The finger pier between Boat Slips is for the use of boats on each side. The location of private gangways should be governed accordingly. In no case will a gangway be allowed to block access to another vessel.
4. **ALTERATIONS:** No part of the docks, utility posts or any other permanent attachment to the docks may be altered in any way except as otherwise permitted in the Declaration. The names of boats shall be displayed only on the boats.
5. **STORAGE:** No Owner shall store any trailer or other vehicle at or on the Association's property or Common Elements without the Association's consent. Supplies, materials, accessories or gear of all kinds shall not be stored at or on the Association's property or Common Elements except in approved dock boxes or lockers. All materials and equipment must be kept clear of the docks. No fuel or other combustibles shall be placed on or within any dock box.
6. **DOCK BOXES:** No more than one (1) dock box shall be permitted for each Boat Slip. The style, location, size and placement of every dock box must be approved by the Board of Directors. Any removal, alteration, or change in the style, location, size, or construction of any dock box shall require the prior written consent of the Board of Directors.
7. **LIFTS:** Each Lot Owner shall have the right have a lift installed for each Boat Slip. The type, size, specifications, removal, location, relocation and method of installation for any boat lift shall be subject to the prior consent of the Board of Directors. Any lift shall be the sole property and responsibility of the Member entitled to the use of the Boat Slip where it is located, and the Association shall have no responsibility with respect to same. All responsibility and liability pertaining to a lift (including, without limitation, that related to the maintenance, repair, and replacement of the lift) and for damage to the Boat Dock Facility resulting from the use of said lift, shall be solely that of the Member owning said lift. Any additions, removal, alteration, or change in the location, size, or construction of any lift shall

require the prior written consent of the Board of Directors. The Association has and retains all riparian rights to the area where the Boat Slips are located and agrees to waive riparian area setbacks for boat lifts installed or replaced by any Member.

#### RIGHT TO USE OF BOAT DOCK FACILITY

8. **LIVE-ABOARDS:** No person will be allowed to stay overnight in any boat or vessel docked at the Facility.

9. **GUESTS:** All Members shall be responsible for assuring that their guests (and tenants, if any are permitted) fully comply with these Rules and Regulations while occupying, using, or visiting the Facility. Further, each Member shall be fully responsible to the Association for any violation by that Member's guests. No Member may invite any guest to use or enjoy any of the property or facilities of the Association in that Member's absence, except by virtue of an assignment/lease/license of the use of the Membership made pursuant to the Declaration and Bylaws. The number of guests invited at any one time by any Member (and tenants, if any are permitted) shall be in keeping with the rights of other Members to have and enjoy the use of the Association's facilities. No Member shall invite guests to the facilities and property of the Association in unreasonable numbers or on unreasonable occasions or for unreasonable times. The Board of the Association may specify what constitutes unreasonable guest usage.

10. **CHILDREN:** Children under twelve (12) years of age are not permitted on docks without the immediate presence of a parent or other responsible adult. Parents shall not allow children to run and play on the dockways.

#### HEALTH

11. **SEWAGE DISPOSAL:** This is a "Closed Head Marina". All permanently installed sewage systems on vessels must be either approved Type I or Type II Marine Sanitation Devices and must be locked in the no discharge position while the vessel is docked at the Boat Dock Facility. All Members and vessels shall comply with federal, state and local requirements regarding sewage disposal.

12. **TRASH DISPOSAL:**

(a) Newspapers, magazines and other solid waste should be placed in a solid waste container or recycling bin. Garbage and other perishable items shall be placed in a plastic bag secured at the top and placed in the solid waste container designated for garbage. Loose garbage shall not be deposited anywhere. **NO TRASH OR EMPTY BOXES OF ANY KIND SHALL BE LEFT ON THE DOCKWAYS.**

(b) No Member, guest or tenant shall throw, discharge, pump or deposit from any boat or dock any refuse, oil, spirits, and flammable liquid or polluting matter into water or onto land. All such matter shall be deposited in appropriately marked trash drums or in approved oil disposal facilities or removed from the Property. Waste material such as paper,

beer or drink cans, cigarette stubs, trash, etc., shall not be thrown from the boats or dock areas. Tossing food or garbage out for birds or other wildlife produces unsanitary conditions around the dock area and is prohibited.

13. ENVIRONMENTAL MATTERS:

(a) Each Member shall, in and around the Common Elements, comply with all laws, rules and regulations concerning the protection of the environment and pay the Association for any damage, expense or liability incurred by the Association due to the Member's (or the Member's tenants, guests or assignees) failure to comply with such laws and regulations or due to any pollution created by, caused by, or contributed to by the Member (or the Member's tenants, guests or assignees). The Member (and the Member's tenants, guests or assignees) shall not release or permit to be released, by action or inaction, any hazardous substances, including oil, gasoline or untreated sewage ("Hazardous Substances") into the water or land of the Common Elements. The costs for which the Member may be responsible include, but are not limited to, the costs of booms, absorbent pads, disposal of Hazardous Substances, clean up oversight by governmental agencies and the Association's personnel and any legal fees incurred in defense or remediation of any violations. The Member shall be responsible for reporting and cleaning up any such release. The Member shall report any release to the Association and shall keep the Association informed on a daily basis of the Member's actions with respect to any clean up. If the Association is not satisfied, in the Association's sole discretion, with the Member's actions in reporting and cleaning up a release, the Association may take any action it deems appropriate regarding the release, at the Member's expense. This provision is in addition to, and not in lieu of, the indemnity provision set forth herein.

(b) The Members shall not discharge oil, contaminated bilge water or sewage into the water. All hazardous chemicals, including waste oil, engine coolant, hydraulic fluid, gasoline, diesel, paint and mineral spirits may only be disposed of in accordance with all regulatory requirements off site from the marina. All spills of gas, diesel fuel, oil or other hazardous materials must be reported immediately to the Association and the US Coast Guard. Violators may be subject to heavy fines. The Boat Dock Facility is committed to the preservation of the local water, land and air quality and intends to comply with the requirements of the Division of Coastal Management Best Practices for Marina Facilities.

VESSEL OPERATION AND  
CARE

14. NAVIGATION AND SPEED: The "rules of the road" and the navigation laws of the United States and the State of North Carolina apply to all vessels in or approaching the berthing areas of the Boat Dock Facility. All Members, tenants, and their families and guests shall comply with all applicable laws and regulations concerning the operation of vessels in and around the Boat Dock Facility. The speed limit within and around the Boat Dock Facility shall be dead slow or wakeless speed, whichever is slower. The Member is responsible for all damage caused by the wake of that Member's boat.

15. DRY LIFT FACILITY: All boats shall be operated and stored in a safe manner in

conformity with standard lift procedures and best practices (and/or such other or additional procedures and requirements as may be imposed by the Board in writing from time to time). Equipment and improvements which are, in the opinion of the Board, not adequate, may be replaced by the Association at the Member's expense if the Member cannot be notified to make the change himself. No part of any boat shall extend over the main walkway. No boat or vessel including outboard motors or bowsprits or extensions docked at the Boat Dock Facility shall exceed the length specified in the Master Plan and/or of the particular Boat Slip in which it is docked.

16. OPERATION OF ENGINES: Unnecessary operation of engines in slips is not permitted. Engines may not be operated in gear while boats are secured to the dock or while in lift.

17. CONDITION OF VESSEL: Each Member's boat must be presented for dockage and maintained throughout free of hazards that may cause danger or expense to the Association or to others. The boat shall be maintained in an operable condition at all times.

18. BOAT REPAIRS: No major repairs or complete overhauls shall be made on boats moored or docked at the Facility. Normal and customary maintenance or repair work above the rail or in the interior of the boat may be performed, but only if such maintenance or work presents no hazard and creates no nuisance and does not interfere with other work in the immediate vicinity being performed by the Association's employees or other Members, captains or crew. Other than employees or approved subcontractors of the Association, only the Member's employees who normally operate the boat may perform work. Approval to perform work other than normal maintenance must be obtained from the Association, whose decision in these matters is final. The extent of permitted repairs shall be at the discretion of the Board of Directors or person designated by the Board. The Board or its agent can STOP AT ONCE any repairs which he feels expose either the docks or the property of others to any harm.

19. ACCESS TO BOATS: Members desiring the Association to have access to their boats shall provide the necessary pass keys to the Board. When any lock is changed, the Member shall inform the Board and provide them with a new key.

## UTILITIES

20. ELECTRICAL SERVICE:

(a) Electrical receptacles providing service to vessels are located on the dock. Neither the Declarant, nor the Association, guarantees the continuity of electrical service to any Member, other party, or vessel. No party shall make any alterations or modifications to any electrical outlet used for servicing a vessel with shore power.

(b) All connections to electrical receptacles shall be with Marine grade power cords only. All such power cords and connectors shall be compatible with the electrical service



outlet and shall fully comply with all applicable codes and regulations. All power cords shall be maintained by the Member in good, safe operating condition. All frayed cords shall be replaced immediately at the Member's expense.

(c) Any arcing, sparking, disruption, or other problems with electrical shore power to the vessel should be reported immediately to the Association. The Member shall discontinue use of electrical shore power if arcing, sparking, or disruption of the shore power service occurs. Continued use of electrical shore power under such conditions of arcing, sparking or disruption of service may result in fire. Any questions about proper installation or service should be directed to the Association.

(d) Electrical service to the Facility is billed jointly in a single statement and will be billed by the Association as a common expense.

21. **WATER SERVICE:** Water service to the Boat Slips at the Boat Facility is presently provided by way of a public or municipal water system. All charges for electricity and other costs of providing such water services shall be a common expense of the Association.

22. **OTHER UTILITIES:** All telephone service, cable television service, and all other utility services of any kind (other than electrical and water) provided to a Boat Slip are at the discretion of the Association and the cost of connection to bring any such service to the Boat Dock Facility and the cost of service will be a common expense of the Association.

## SAFETY

23. **SAFETY AND COMPLIANCE WITH LAW:** All persons using the Boat Dock Facility shall do so lawfully and in such fashion as to maintain and preserve the property of the Association. Each person shall be responsible for his/her own conduct and safety. No high-heeled, spiked, or corrugated shoes shall be worn on any pier or dock of the Association. All persons shall comply with all applicable laws, statutes, ordinances, rules, and regulations.

24. **STORM PRECAUTIONS:** To prevent damage from weather or storms, dock lines should be properly secured, and all outside property of any Member or guest shall be battened down, secured, or placed inside the boat which should be closed and locked when the Member leaves his Boat Slip. Members planning to be absent from their Boat Slips for a prolonged period should remove all objects from their boats and notify the Association of their plans before leaving. Also, all movable items should be removed from each boat if storm weather is threatening. In the event that (a) the National Weather Service or other appropriate governmental agency shall issue a hurricane or tropical storm watch covering the location of the Boat Dock Facility or (b) some other occurrence or threatened occurrence shall raise concern about the safety of the Boat Dock Facility, the Board of Directors of the Association shall have the power and authority to require that all vessels be removed from the Facility within twenty (24) hours of notice to the Members. In the event that the Member shall fail or refuse to so remove that Member's vessel or the vessel of a tenant or guest of a Member the Member shall be responsible for any damage to the Boat Dock Facility or any other vessel

resulting from the vessel in the Boat Slip of such Member.

The owner(s) of each boat in or at the Boat Dock Facility are deemed to have appointed the Association as his/their agent with authority to take all actions reasonably necessary to preserve and maintain the Association's property and such boat, in that order, but the Association is under no obligation to do so.

In the event any lawful authority orders the evacuation of persons from the Association's property, each Member and his guests or tenants shall immediately comply with such orders including, if necessary, leaving the Association's facilities and causing his vessel, or the vessel docked at the Boat Dock Facility at his instance, to be removed from the Boat Dock Facility. Any damage caused by such persons or vessels wrongfully remaining or left at the Boat Dock Facility shall be repaired at the sole expense of the Member holding the Boat Slip certificate for the applicable Boat Slip.

25. SECURITY: The Association should be notified if any suspicious people or unusual activities are seen. All boats should be kept locked at all times. If owners sell their boats privately, they should accompany all prospective buyers.

#### COMMON ELEMENT AMENITIES

26. GAZEBO AND POCKET PARK: The gazebo, pocket park and other improvements located in the Common Element ("Amenities") are reserved for use by the Members, their tenants and/or guests. The Amenities are subject to use limitations by applicable governmental regulations.

27. PARKING: Members are encouraged and authorized to use golf carts to access the Boat Docking Facility and golf carts may be parked within parking areas in the Common Element while making use of the Boat Dock Facility. No washing of cars or boats will be allowed within the Common Elements. No boats or trailers whatsoever shall be parked anywhere on the Common Elements. Any boats or trailers parked in violation hereof may be towed away at the instance of the Association at the owner's risk and expense. Cars shall be moved from designated loading areas before Members go to their Boat Slips in order that others may use the space. Service vehicles used in connection with permitted repairs to boats or in connection with repair or maintenance of the Common Elements will be permitted on a temporary basis while such repair or maintenance is being completed. The Association shall have the right to limit and govern all parking spaces in the Common Elements. Any vehicles parked in violation of parking regulations will be towed at the risk and expense of the owner or Member, as applicable.

#### COMMERCIAL ACTIVITIES

28. COMMERCIAL PURPOSES: Commercial usage (including, but not limited to, sales, servicing, and advertising of boats and vessels) shall not be permitted at the Boat Dock Facility or elsewhere within the Common Elements. All commercial uses are prohibited. No business or professional services or activities may be conducted aboard any vessels, upon any docks, or at any

other location at the Boat Dock Facility. Any limited exceptions to the foregoing policy may be granted, with or without conditions (or may be denied) by the Board, acting in its sole and unfettered discretion, in writing, on a case-by-case basis for each Boat Slip, after written application by the applicable Member.

29.       **SIGNS:** No "FOR SALE" signs are permitted on any boats, except with the prior written approval of the Board of Directors. All advertising, business, and promotional signs are prohibited.

30.       **SOLICITATION:** No unauthorized person shall solicit business or offer goods, wares, merchandise or services for sale on the premises of the Association. The Board of Directors may authorize such activities for short-term events for the benefit and enjoyment of the Members. The Declarant may use the Common Elements including the Boat Dock Facility, in connection with the sale of Lots, at the Declarant's discretion during the Development Period.

### QUALITY PRESERVATION

31.       **NOISE:** Noise should be kept to a minimum at all times. All Members and their guests shall refrain from playing stereo, television or musical instruments loudly after 10:00 p.m. and before 8:00 am. Everyone shall respect the rights of other persons lawfully on the premises. Parents shall not allow children to run and play on the docks and other facilities. After 10:00 p.m. quiet, orderly behavior is expected of all Members and their guests. Children should be under the direction of their parents at all times. Discretion in operating engines, generating plants, radios, televisions, other sound producing devices, and other power equipment should be used so as not to create a nuisance or disturbance.

32.       **DISORDERLY CONDUCT:** Disorderly conduct by a Member, his tenant or his visitors that might injure a person, cause damage to property, or disturb other Members tenants or guests, is prohibited. If a Member or the Member's agents, tenants, employees, crew or guests violate any of these rules and regulations, or engage in disorderly conduct or conduct that creates a threat of injury or actual injury to any person, property, then the Association shall have the authority to eject the perpetrator of such conduct from the Common Elements immediately and to report the same to the Board for its consideration and further action.

33.       **ANIMALS:** Animals shall be leashed at all times when on the Association's premises. No animals shall be tied to any part of the dock, including finger piers or dock boxes. Animals shall be physically kept on board at all times and shall not be permitted to be loose on the docks. The owner of an animal on the Association's premises will be responsible for cleaning up after such animal, Including all pet feces. "Animal" as used herein shall refer to domesticated pets, which shall be the only animals permitted on the Association's property.

34.       **FISH CLEANING:** Fish cleaning of any kind will not be permitted on docks, on boats on lifts or tied to docks, or parking areas except at fish cleaning stations, if any, designated by the Board of Directors. Fish cleaning stations shall be properly cleaned and all debris removed and properly disposed of following each use.

### MISCELLANEOUS

35.     **LIABILITY INSURANCE:** All vessels docked in any Boat Slip or on any pier or wharf of the Boat Dock Facility shall be covered at all times by adequate liability insurance with limits of no less than \$1,000,000.00 per occurrence or greater as determined from time to time by the Board of Directors. Such insurance shall name the Association as an additional Insured, with waiver of subrogation in favor of the Association, and proof of such insurance shall be provided by the Member to the Association. All such policies of Insurance shall require thirty (30) days advance notice by the insurance company to the Association of any amendment or cancellation.

36.     **DAMAGE:** Each Member is and shall be fully liable and responsible for all damage caused by that Member, his tenants, employees, agents, guests and/or vessels to any other person and/or property, specifically including the Facility and any other property of the Association.

37.     **CONCLUSION:** Violations of or disagreements arising under these Rules and Regulations should be referred to the Board of Directors for appropriate action or resolution. Final decisions will be made by the Board of Directors. These Rules and Regulations shall be reviewed by the Board periodically, and appropriate changes or additions may be made. If a Member has any questions or suggestions, please refer them to the Board or to the proper committee. Please note that the Bylaws provide for fines against any Member violating these Rules and Regulations and give the Board of Directors the power to suspend the rights of any Member for non-compliance.