

25CV001224-240

STATE OF NORTH CAROLINA
CRAVEN COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBER 25 CVS

DANIEL RITTER, MARY BETH HARRIS,)
JULIE B. GOORMAN, MICHAEL C.)
BLACK, SUSAN R. KLEIN, DAVID)
G. BROWN, JEFFREY P. SCHUELLER,)
FRANK UNETIC, CHARLES L. JUMP, JR.)
SUZANNE LAYTON, CAROL R.)
SPEARS, BEN A. WATFORD, DON)
SHUTTS, REBECCA TINDALL, CAROL)
CIPRIOS, JARED WILSON, KATHY)
BELLFROSE, WILLIAM L.)
MICHELINIE, SUSAN SPIVAK,)
AMANDA JACKSON,)
JEANNE DOTY, FRANK TIETGENS,)
DANIEL SHANE MALONE, RICHARD)
EASLEY, JILL E. RITZ, JERRY O.)
CRELECH, EVELYN HASSLER, STEVE)
ROBICHAUD, JEFFREY WILSON,)
NANCY A. HAMBY, BEVERLY)
PHENES, PAUL A. STOCKMAN, JUSTIN)
BECK, KATHARINE JEAN EDSTROM,)
JAMES FIESER, WRAY SIMPSON,)
JOHN BUECKING, NORMAN)
MEISSNER, STEPHEN R. HARRIS,)
ROBERT JANKOWSKI, JAMES CURRY,)
DOUGLAS G. GENDREAU, TODD)
WAGNER, TOM GAUTHIER,)
BARBARA MELLOR, WILLIAM)
EICHELBERG, MICHAEL RIZZO,)
CRAIG G. MACINTYRE, MARK A.)
BRADLEY, CHRIS J. BECK, FELECIA)
WRIGHT NACE, EDWARD R. DZIOBA,)
KIM ZIMMERMANN, HAROLD)
GUSTAFSON, TERESA LYNN BROWN,)
EDWARD OSTROSKY, JANE HALWEG,)
JANE HAEUSSLER, GEORGE)
SECHRIST, STEPHEN BURTON,)
DAVID KENT JOHNSON, RICK WOLFE,)
ROBERT GILLHAM, DAVID SIMPSON,)
KEN MORRIS, DOUGLAS LONGHINI,)
PATRICIA HUNT, CHARLES CRAIG,)
ANN H. THOMAS, MAUREEN POST,)
and SUSAN JONES,)

**DECLARATORY JUDGMENT
ACTION AND MOTION FOR
PRELIMINARY INJUNCTION**

(cont'd)

)
Plaintiffs)
v.)
)
FAIRFIELD HARBOUR PROPERTY)
OWNERS ASSOCIATION, INC.,)
)
<u>Defendant.</u>)

NOW COME ALL PLAINTIFFS, by and through undersigned counsel, and complaining of Defendant, Fairfield Harbour Property Owners Association, Inc., and do hereby allege and say the following:

INTRODUCTION

1. This Declaratory Judgment Action and Motion for Preliminary Injunction arises from the unlawful and defensive actions of the Board of Directors of Fairfield Harbor Property Owners Association, Inc. The Fairfield Harbour subdivision is a 2,800+ lot planned community in Craven County, North Carolina. In Spring 2024, a majority of the eligible property-owning members of the Fairfield Harbor Property Owners Association successfully voted to remove two (2) members of the Board of Directors. On June 28, 2024, in an unveiled effort to protect themselves from meeting the same fate, a majority of the remaining Directors of the Board unlawfully purported to hold a vote amongst themselves to change the Association’s Bylaws. Specifically, the Board voted to require a supermajority vote of 67% of members to remove a Director, when the existing requirement for removal was a majority of the members. This action not only violated the express language of the Association’s Bylaws, it was also a clear and unabashed violation of N.C.G.S. Section 55A-8-08, which limits and caps the votes required to remove a Director to that which “would be sufficient to elect the director at a meeting to elect directors....” Even if an increase of the vote required for Director removal *was* permissible under the Bylaws or applicable law, such an amendment could have only been approved by an affirmative

vote of the Association members under N.C.G.S. Section 55A-7-23, *Voting Requirements*, and 47F-3-103(b), *Executive Board Members and Officers*. Further, the purported amendment of the Bylaws must have been attempted either through N.C.G.S. Section 55A-10-20 *Amendment by Directors* or N.C.G.S. Section 55A-10-21, *Amendment by Directors and Members*. If N.C.G.S. Section 55A-10-20 was the statute purportedly employed, the amendment fails because Defendant failed to comply with the notice requirements and failed to recognize that the corporation has “members entitled to vote thereon.” If N.C.G.S. Section 55A-10-21 was the statute purportedly employed, the amendment fails because members were not involved in the purported amendment process. Lastly, even if the Board had possessed authority to amend the Bylaws to require a supermajority vote for Director removal, their action was invalid due to a lack of proper notice of the vote which was not waived. In September of 2024, another members’ vote was taken to remove four (4) Directors or any of their replacements for the remaining portions of any term without cause, the results of which was a majority in favor of removal, but which the Board of Directors deemed a failure due to the lack of a “supermajority” vote. Accordingly, Plaintiffs now seek, *inter alia*, declaratory relief affirming that the aforementioned majority vote (52.31%) to remove the four (4) Directors was valid and effectual, the conduct of the Board of Directors in amending the Bylaws was *ultra vires* and *void ab initio*, and declaring that the voting requirement for removal of a Director must comport with all provisions of N.C.G.S Section 55A, including but not limited to 55A-8-08(c). Plaintiffs further seek to enjoin the Board of Directors from taking any action based upon their purportedly amended Bylaws and to enjoin the four (4) removed Directors or their replacements from remaining on the board or taking any action as Directors. Plaintiffs seek immediate removal of the four (4) Directors/their replacements that were voted against in

September 2024, and to reinstate the Bylaws as they existed prior to the Board's unlawful vote of June 28, 2024.

PARTIES, JURISDICTION, AND VENUE

2. The Fairfield Harbour subdivision, as shown on maps recorded within the Craven County Register of Deeds, incorporated herein by reference, is a planned community with over 2,800 lots in Craven County.

3. At all times material hereto, Plaintiffs owned and continue to own, real property within the Fairfield Harbour subdivision, as listed below.

4. Plaintiff Daniel Ritter is a citizen and resident of Craven County, upon information and belief, owning property at 1509 Caracara Drive, New Bern, North Carolina 28560.

5. Plaintiff Mary Beth Harris is a citizen and resident of Craven County, upon information and belief, owning property at 1219 Santa Lucia Road, New Bern, North Carolina 28560.

6. Plaintiff Julie B. Goorman is a citizen and resident of Craven County, upon information and belief, owning property at 902 Caroline Court, New Bern, North Carolina 28560.

7. Plaintiff Michael C. Black is a citizen and resident of Craven County, upon information and belief, owning property at 1102 Harbour Pointe Drive, New Bern, North Carolina 28560.

8. Plaintiff Susan R. Klein is a citizen and resident of Craven County, upon information and belief, owning property at 1102 Barkentine Drive, New Bern, North Carolina 28560.

9. Plaintiff David G. Brown is a citizen and resident of Craven County, upon information and belief, owning property at 1503 Columbus Court, New Bern, North Carolina 28560.

10. Plaintiff Jeffrey P. Schueller is a citizen and resident of Craven County, upon information and belief, owning property at 1600 Caracara Drive, New Bern, North Carolina 28560.

11. Plaintiff Frank Unetic is a citizen and resident of Craven County, upon information and belief, owning property at 1317 Caracara Drive, New Bern, North Carolina 28560.

12. Plaintiff Charles L. Jump, Jr. is a citizen and resident of Craven County, upon information and belief, owning property at 6203 Albatross Drive, New Bern, North Carolina 28560.

13. Plaintiff Suzanne Layton is a citizen and resident of Craven County, upon information and belief, owning property at 5803 Jolly Roger Court, New Bern, North Carolina 28560.

14. Plaintiff Carol R. Spears is a citizen and resident of Craven County, upon information and belief, owning property at 6015 Cassowray Lane, New Bern, North Carolina 28560.

15. Plaintiff Ben A. Watford is a citizen and resident of Craven County, upon information and belief, owning property at 903 Shipyard Point, New Bern, North Carolina 28560.

16. Plaintiff Don Shutts is a citizen and resident of Craven County, upon information and belief, owning property at 812 Bluebird Drive, New Bern, North Carolina 28560.

17. Plaintiff Rebecca Tindall is a citizen and resident of Craven County, upon information and belief, owning property at 5721 Gondolier Drive, New Bern, North Carolina 28560.

18. Plaintiff Carol Ciprios is a citizen and resident of Craven County, upon information and belief, owning property at 923 Caroline Court, New Bern, North Carolina 28560.

19. Plaintiff Jared Wilson is a citizen and resident of Craven County, upon information and belief, owning property at 5610 Barbary Coast Drive, New Bern, North Carolina 28560.

20. Plaintiff Kathy Bellerose is a citizen and resident of Craven County, upon information and belief, owning property at 5618 Barbary Coast Drive, New Bern, North Carolina 28560.

21. Plaintiff William L. Michelinie is a citizen and resident of Craven County, upon information and belief, owning property at 6106 Pelican Drive, New Bern, North Carolina 28560.

22. Plaintiff Susan Spivak is a citizen and resident of Craven County, upon information and belief, owning property at 7172 Windward Drive, New Bern, North Carolina 28560.

23. Plaintiff Amanda Jackson is a citizen and resident of Craven County, upon information and belief, owning properties at 1301 and 1302 Harbourside Drive, New Bern, North Carolina 28560.

24. Plaintiff Jeanne Doty is a citizen and resident of Craven County, upon information and belief, owning property at 1304 Harbourside Drive, New Bern, North Carolina 28560.

25. Plaintiff Frank Tietgens is a citizen and resident of Craven County, upon information and belief, owning property at 927 Sea Holly Court, New Bern, North Carolina 28560.

26. Plaintiff Daniel Shane Malone is a citizen and resident of Craven County, upon information and belief, owning property at 5628 Goldolier Drive, New Bern, North Carolina 28560.

27. Plaintiff Richard Easley is a citizen and resident of Craven County, upon information and belief, owning property at 5502 Blackbeards Lane, New Bern, North Carolina 28560.

28. Plaintiff Jill E. Ritz is a citizen and resident of Craven County, upon information and belief, owning property at 5809 Port Drive, New Bern, North Carolina 28560.

29. Plaintiff Jerry O. Creech is a citizen and resident of Craven County, upon information and belief, owning property at 5915 Santa Domingo Court, New Bern, North Carolina 28560.

30. Plaintiff Evelyn Hassler is a citizen and resident of Craven County, upon information and belief, owning property at 908 Shipyard Point, New Bern, North Carolina 28560.

31. Plaintiff Steve Robichaud is a citizen and resident of Craven County, upon information and belief, owning property at 1402 Mona Passage Court, New Bern, North Carolina 28560.

32. Plaintiff Jeffrey Wilson, is a citizen and resident of Craven County, upon information and belief, owning property at 909 Shipyard Court, New Bern, North Carolina 28560.

33. Plaintiff Nancy A. Hamby is a citizen and resident of Craven County, upon information and belief, owning property at 1105 Coral Reef Drive, New Bern, North Carolina 28560.

34. Plaintiff Beverly Phenes is a citizen and resident of Craven County, upon information and belief, owning property at 1419 Santa Lucia Road, New Bern, North Carolina 28560.

35. Plaintiff Paul A. Stockman is a citizen and resident of Craven County, upon information and belief, owning property at 6100 Pelican Drive, New Bern, North Carolina 28560.

36. Plaintiff Justin Beck is a citizen and resident of Craven County, upon information and belief, owning property at 901 Shipyard Point, New Bern, North Carolina 28560.

37. Plaintiff Katharine Jean Edstrom is a citizen and resident of Craven County, upon information and belief, owning 6006 Stern Court, New Bern, North Carolina 28560.

38. Plaintiff James Fieser is a citizen and resident of Craven County, upon information and belief, owning property at 6403 Albatross Drive, New Bern, North Carolina 28560.

39. Plaintiff Wray Simpson is a citizen and resident of Craven County, upon information and belief, owning property at 6108 Castleton Court, New Bern, North Carolina 28560.

40. Plaintiff John Buecking is a citizen and resident of Craven County, upon information and belief, owning property at 5917 Santo Domingo Court, New Bern, North Carolina 28560.

41. Plaintiff Norman Meissner is a citizen and resident of Craven County, upon information and belief, owning property at 6000 Cardinal Drive, New Bern, North Carolina 28560.

42. Plaintiff Stephen R. Harris is a citizen and resident of Craven County, upon information and belief, owning property at 6103 Falcon Drive, New Bern, North Carolina 28560.

43. Plaintiff Robert Jankowski is a citizen and resident of Craven County, upon information and belief, owning property at 1019 Harbour Point Drive, New Bern, North Carolina 28560.

44. Plaintiff James Curry is a citizen and resident of Craven County, upon information and belief, owning property at 1112 Crows Nest Court, New Bern, North Carolina 28560.

45. Plaintiff Douglas G. Gendreau is a citizen and resident of Craven County, upon information and belief, owning property at 905 Diamond Court, New Bern, North Carolina 28560.

46. Plaintiff Todd Wagner is a citizen and resident of Craven County, upon information and belief, owning property at 909 Muirfield Court, New Bern, North Carolina 28560.

47. Plaintiff Tom Gauthier is a citizen and resident of Craven County, upon information and belief, owning property at 1222 Mona Passage Court, New Bern, North Carolina 28560.

48. Plaintiff Barbara Mellor is a citizen and resident of Craven County, upon information and belief, owning property at 11034 Windward Drive, New Bern, North Carolina 28560.

49. Plaintiff William Eichelberg is a citizen and resident of Craven County, upon information and belief, owning property at 6102 Ibis Lane, New Bern, North Carolina 28560.

50. Plaintiff Michael Rizzo is a citizen and resident of Craven County, upon information and belief, owning property at 1108 Harbour Point Drive, New Bern, North Carolina 28560.

51. Plaintiff Craig G. MacIntyre is a citizen and resident of Craven County, upon information and belief, owning property 1010 Coral Reef Drive, New Bern, North Carolina 28560.

52. Plaintiff Mark A. Bradley is a citizen and resident of Craven County, upon information and belief, owning property at 129 Argosy Drive, New Bern, North Carolina 28560.

53. Plaintiff Chris J. Beck is a citizen and resident of Craven County, upon information and belief, owning property at 905 Bee Tree Court, New Bern, North Carolina 28560.

54. Plaintiff Felccia Wright Nace is a citizen and resident of Craven County, upon information and belief, owning property at 5808 Jolly Roger Court, New Bern, North Carolina 28560.

55. Plaintiff Edward R. Dzioba is a citizen and resident of Craven County, upon information and belief, owning property at 2124 Royal Pines Drive, New Bern, North Carolina 28560.

56. Plaintiff Kim Zimmermann is a citizen and resident of Craven County, upon information and belief, owning property at 813 Pelican Drive, New Bern, North Carolina 28560.

57. Plaintiff Harold Gustafson is a citizen and resident of Craven County, upon information and belief, owning property at 6109 Albatross Drive, New Bern, North Carolina 28560.

58. Plaintiff Teresa Lynn Brown is a citizen and resident of Craven County, upon information and belief, owning property at 1115 Santa Lucia Road, New Bern, North Carolina 28560.

59. Plaintiff Edward Ostrosky is a citizen and resident of Craven County, upon information and belief, owning property at 1505 Santa Lucia Road, New Bern, North Carolina 28560.

60. Plaintiff Jane Halweg is a citizen and resident of Craven County, upon information and belief, owning property at 902 Nassau Court, New Bern, North Carolina 28560.

61. Plaintiff Jane Haeussler is a citizen and resident of Craven County, upon information and belief, owning property at 6119 Castleton Court, New Bern, North Carolina 28560.

62. Plaintiff George Sechrist is a citizen and resident of Craven County, upon information and belief, owning property at 709 Black Swan Road, New Bern, North Carolina 28560.

63. Plaintiff Stephen Burton is a citizen and resident of Craven County, upon information and belief, owning property at 915 Hurricane Court, New Bern, North Carolina 28560.

64. Plaintiff David Kent Johnson is a citizen and resident of Craven County, upon information and belief, owning property at 6218 Harbourside Drive, New Bern, North Carolina 28560.

65. Plaintiff Rick Wolfe is a citizen and resident of Craven County, upon information and belief, owning property 1019 Barkentine Drive, New Bern, North Carolina 28560.

66. Plaintiff Robert Gillham is a citizen and resident of Craven County, upon information and belief, owning property at 1226 Petite Terre Court, New Bern, North Carolina 28560.

67. Plaintiff David Simpson is a citizen and resident of Craven County, upon information and belief, owning property at 5612 Goldolier Drive, New Bern, North Carolina 28560.

68. Plaintiff Ken Morris is a citizen and resident of Craven County, upon information and belief, owning property at 1513 Santa Lucia Road, New Bern, North Carolina 28560.

69. Plaintiff Douglas Longhini is a citizen and resident of Craven County, upon information and belief, owning property at 5804 Jolly Roger Court, New Bern, North Carolina 28560.

70. Plaintiff Patricia Hunt is a citizen and resident of Craven County, upon information and belief, owning property at 1309 Caracara Drive, New Bern, North Carolina 28560.

71. Plaintiff Charles Craig is a citizen and resident of Craven County, upon information and belief, owning property at 1201 Pelican Drive, New Bern, North Carolina 28560.

72. Plaintiff Ann H. Thomas is a citizen and resident of Craven County, upon information and belief, owning property at 802 Shipyard Point, New Bern, North Carolina 28560.

73. Plaintiff Maureen Post is a citizen and resident of Craven County, upon information and belief, owning property at 826 Pelican Drive, New Bern, North Carolina 28560.

74. Plaintiff Susan Jones is a citizen and resident of Craven County, upon information and belief, owning property at 6121 Castleton Court, New Bern, North Carolina 28560.

75. As owners of real property within the Fairfield Harbour subdivision, all Plaintiffs were and are members of Fairfield Harbour Property Owners Association, Inc., as of the date of the unlawful acts complained of herein, that being the improper and *ultra vires* amendment of the Association's Bylaws by vote of the Board of Directors of the Association, as further described below.

76. The "Master Declaration of Fairfield Harbour," dated October 23, 1979, sets forth certain provisions applicable to properties in the Fairfield Harbour subdivision, and declares that property owners shall become members of "Fairfield Harbour Property Owners Association, Inc." See "Master Declaration of Fairfield Harbour," Exhibit "1," p 7, attached.

77. The "Master Declaration of Fairfield Harbour" describes the Fairfield Harbour subdivision, in part, as:

certain properties in Number Two Township, Craven County, North Carolina, a portion of which properties were conveyed to FHI [Fairfield Harbour, Inc.] by deed from Treasure Lake of North Carolina, Inc. dated December 9, 1977, and recorded in Book 901, at Page 504, in the office of the Register of Deeds of Craven County; and... a portion of the aforesaid properties, together with certain properties adjacent or contiguous thereto, or in the general vicinity thereof, comprise a development known as "Fairfield Harbour." See Master Declaration of Fairfield Harbour, Exhibit "1," p 1.

78. "Articles of Amendment to the Restated Charter of Fairfield Harbour Property Owners Association, Inc." filed on August 12, 1983, describe the Fairfield Harbour development as:

the same may now or hereafter be shown on the maps and deeds thereof recorded from time to time (including without limitation the property shown on the maps of Treasure Cove Subdivision, that property identified in those deeds recorded in Book 901 at Page 504, Book 930 at Page 798 and Book 964 at Page 936 of the Craven County Registry and all that property contiguous to or in the general vicinity of the foregoing property)...See "Articles of Amendment," Exhibit "2," attached.

79. Defendant "Fairfield Harbour Property Owners Association, Inc.,¹ a non-profit corporation organized under the laws of the State of North Carolina...is the Property Owners Association which is charged with the management of the development known as 'Fairfield Harbour', located in Craven County, North Carolina..." See "Declaration of Unit Ownership," Exhibit "3," p 1.

80. Defendant Fairfield Harbour Property Owners Association, Inc. (hereinafter referred to as the "Association") is a non-profit corporation incorporated and existing under the laws of State of North Carolina, with its principal place of business and principal business office being located in Craven County, North Carolina.

81. This Court has jurisdiction over the subject matter of this action, as well as over the parties hereto.

82. Venue is proper in the Superior Court of Craven County, North Carolina.

STATEMENT OF FACTS

83. At the time of the actions complained of herein, the Association was governed by the 2020 "Amended & Restated Bylaws of the Fairfield Harbour Property Owners Association, Inc." [hereinafter referred to as "Bylaws"]. See "Bylaws," Exhibit "4," attached.

¹ Defendant was formerly "Treasure Cove Property Owners Association, Inc."

84. The Bylaws of the Association called for a seven (7) member Board of Directors, each of whom were to be “elected by a plurality vote of the Members, at the annual meeting....” Ex. “4,” pp 11-12.

85. Before and in 2024, the above-captioned Plaintiffs held grave concerns about certain actions and financial decisions by the Board of Directors of the Association.

86. These concerns prompted a petition for a member vote for the removal of two (2) members of the Board of Directors.

87. On or about May 13, 2024, the results were announced, that being that the majority of the Association members were in favor of removal of the two (2) Directors.

88. In a heavy-handed and unlawful reaction to this members’ vote, the remaining Board of Directors attempted to avoid a similar fate, which is the basis of the instant litigation.

89. On June 28, 2024, the Board of Directors held a meeting. The minutes of this meeting are attached hereto as Exhibit “5.”

90. At no time prior to the meeting was notice that a motion to amend the Bylaws would be made, and this item was not listed on the meeting’s agenda. *Id.* at p 1.

91. However, after the meeting began, and after new officers were elected, Board Member Pendleton:

asked if it would be possible to amend the Bylaws so that a petition for removal of Board members would have to have a cause and a supermajority. Director Pendleton made a motion to add a Bylaw change to the end of the agenda. Second by VP Pfefferkorn. Approved: President Albertini; VP Pfefferkorn; Directors Broody, McLamb and Pendleton. Opposed: Directors Barajas and Moore. Motion passed by a majority vote....

Director Pendleton made a motion to amend the Bylaws stating that any vote for removal of any member of the FIPOA Board, including current members, will require 67% of POA members who are eligible to vote according to the POA Bylaws in effect at the time of said recall ballot is distributed for voting. President Albertini made a second. Approved: President Albertini; VP Pfefferkorn; Directors

Broody, McLamb and Pendleton. Opposed: Directors Barajas and Moore. Motion approved by majority vote. (See FHPOA Bylaws Article V; Section 9; Paragraph A.)

Attorney Carmichael will send Secretary Miller the exact wording needed for the amendment...Ex. "5," pp 2, 5.

92. "Resolution 2024-03 of the Board of Directors of Fairfield Harbour Property Owners Association, Inc." was later entered, stating as follows:

A vote for removal of a Director may be called by the Board Directors or by petition of the Members for special meeting as otherwise provided in these Bylaws. Provided, however, that the vote required for removal of a sitting Director who has been duly elected or appointed pursuant to these Bylaws shall be not less than sixty-seven percent (67%) of the eligible vote of the POA Membership. See "Resolution 2024-03," Ex. "6," attached.

93. The Board's actions set forth above were unauthorized, unlawful, and invalid.

94. Not only did this purported Bylaw change by the Board of Directors violate the wording of the Bylaws themselves, **N.C.G.S. Section 55A-8-08**, and other sections of Chapter 55A and/or Chapter 47F, it was effectuated without proper notice, which was not waived. Even if such a change to the Bylaws ("the purpose of which was to increase or decrease the vote required for any member action") was authorized by law, *only* the Association's members could have voted for and approved such a change.

95. In or around August 2024, some Plaintiffs herein submitted a petition for a Special Meeting for the purpose of removing four (4) of then current Directors, Les Pendleton, Gayle Albertini, Robert Broody, David Pfefferkorn, or any of their replacements for the remaining portions of any term without cause.

96. On September 27, 2024, the results of the ballot for such removal were as follows:

For removal of the four (4) Members of the Board of Directors: 52.31%

Against removal of the four (4) Members of the Board of Directors: 47.69%. *See* Ballot Memo, Ex. "7," attached.

97. Under their purported, unlawful Bylaws requiring a 67% supermajority vote, the Board of Directors then declared that the recall measure to remove the Directors failed.

98. Plaintiffs have been harmed by the Board's declaration that the measure failed and by allowing the Directors and/or their replacements, whom a majority of members voted to remove, to remain on the Board.

99. The violations by Defendant of the Bylaws, which is a valid contract between Plaintiffs and the Association, and of multiple North Carolina General Statutes, are set forth below.

A. THE BOARD'S ACTION VIOLATED THE EXPRESS TERMS OF ITS BYLAWS AND THE NORTH CAROLINA NON-PROFIT CORPORATION ACT

100. In Article IV, *Official Meetings of Members*, at Section 6 of the Bylaws, it is specified that Association members elect the Board's Directors through a plurality vote:

With the exception of DOR amendments (67% affirmative) and the Election of Directors of the FHPOA (plurality vote), any meeting of the Members of the Association, at which a quorum is present, or any vote by mail-in ballot without a meeting where a quorum has participated, the vote of a majority of those votes cast shall be necessary for the adoption of any matter voted upon by the Members. *See* Bylaws, Exhibit "4," at p 6.

101. In Article V, *Removal of Directors*, at Section 9 of the Bylaws, it is specified that removal of Directors is governed by N.C.G.S. Section 55A-8-08:

A. Pursuant to N.C.G.S. § 55A-8-08 and Article IV Section 4(B) of these Bylaws², Directors may be removed from office with or without cause at a special meeting of the members of the Association called specifically for such purpose...." *Id.* at p 15.

² Article IV, Section 4(B), *Special Meetings of the Association*, which is of no consequence in this analysis, states: Special meetings of the Members may be called only by the Board at any time in the manner herein provided....B. A special meeting may also be called by the Board upon the written petition requesting the call of such a meeting from members representing at least ten (10%) of the votes entitled to be cast on any matter or concern of the Association....and such purpose must be a matter on which the Members are entitled to vote.

102. Section 55A-8-08 of the North Carolina Non-Profit Corporation Act, *Removal of Directors Elected by Members or Directors*, states—**without allowance of the bylaws or other governing documents to specify otherwise:**

(a) The members may remove one or more directors elected by them with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a class, chapter or other organizational unit, or by region or other geographic grouping, the director may be removed only by that class, chapter, unit, or grouping.

(c) Except as provided in subsection (i) of this section, a **director may be removed under subsection (a) or (b) of this section, only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors...**(boldface added).

103. In addition, N.C.G.S. Section 55A-7-23, *Voting Requirements*, states:

(a) Unless this Chapter, the articles of incorporation, or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of a majority of the votes cast is the act of the members.

(b) An amendment to the articles of incorporation or bylaws on which members are entitled to vote, the purpose of which is to increase or decrease the vote required for any member action, shall be approved by the members entitled to vote on that action by a vote that would be sufficient to take the action before the amendment.

104. Thus, because the voting requirement for removal of a Director is specifically governed by Section 55A-8-08, a fact that is also specifically acknowledged in the Bylaws themselves, the voting requirement set forth within 55A-8-08(c) cannot be changed.

105. Alternatively, if This Court finds that such an amendment to increase the vote required for Director removal was permissible by contract (the Bylaws) or statute, then Plaintiffs assert that such amendment could only be effectuated by a vote of the members under Section 55A-7-23(b).

106. Defendant's response that Article IX of its Bylaws, as they existed at the time of the vote, allowed the Board of Directors the unfettered right to amend any and all Bylaws,³ fails as inconsistent with:

- (1) the Bylaws themselves (*see* Article V, Section 9, *Removal of Directors*, discussed above),
- (2) the applicable North Carolina General Statutes cited above and below, and
- (3) laws of contract interpretation.

107. North Carolina General Statutes Section 55A-2-06, *Bylaws*, states that the bylaws of a corporation "may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation."

108. At the time of the Board of Directors' unlawful amendment of the Bylaws, Article IX of the Bylaws stated, in its entirety:

These Bylaws may be amended by the affirmative vote of five (5) of the (7) Directors of the Board.

109. Article IX is specifically limited by Section 55A-8-08, *Removal of Directors Elected by Members or Directors*, which:

- (1) does not contain a clause allowing an exception to its applicability (as it does, for instance, with respect to limiting removal of a director for "cause" only, if the articles of incorporation so provide), and
- (2) expressly states that a "**director may be removed under subsection (a) or (b) of this section, only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors...**" (boldface and underscore added).

³ See Ex. 6 and correspondence from Attorney Carmichael dated October 18, 2024, Exhibit "8," attached.

110. Thus, the purported amendment was “inconsistent with law”; namely, Section 55A-8-08.

111. By way of further explanation, any amendment to the Bylaws must be consistent with Section 55A-8-08(c), which states a condition of Director removal must be that “the number of votes cast to remove the director would be sufficient to elect the Director at a meeting to elect directors.” As per the Bylaws, the number of votes sufficient to elect a Director is a “plurality.” Therefore, the number of votes necessary to remove a director cannot be less than a plurality. The 67% provision purportedly adopted by the Board violates this provision. The number of votes “sufficient” to elect a Director by plurality is a majority only, at most. For example, if two candidates were running and there were 100 eligible votes, then the number votes “sufficient” to ensure a win for a particular candidate is 51, which is a majority. If three (3) candidates were running, then the number of votes “sufficient” to ensure a win for a particular candidate is 34 of 100. Under the same scenario, if four (4) candidates were running, then the votes need to ensure a win is 26. In sum, the number of votes “sufficient” to be elected as a Director is, **at most**, a majority. Therefore, the attempt by the Board of Directors to change this requirement to 67% violates N.C.G.S. Section 55A-8-08(c) and the Bylaws.

112. Alternatively, if the Bylaws could in fact be amended to contravene Section 55A-8-08, which is denied, it is submitted that such amendment could only be effectuated by a successful vote of the members pursuant to N.C.G.S. Sections 55A-7-23, *Voting Requirements*, and 55A-10-21, *Amendment by Directors and Members*.⁴

⁴This statute states, in pertinent part:

(a) If the corporation has members entitled to vote thereon, then, unless this Chapter, the articles of incorporation, bylaws, the members (acting pursuant to subsection (b) of this section), or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, an amendment to a corporation's bylaws to be adopted shall be approved:

(1) By the board or in lieu thereof in writing by the number or proportion of members entitled under G.S. 55A-7-02(a) (2) to call a special meeting to consider such amendment;

113. By virtue of being owners in the subdivision, each owner is a member.

114. The corporation has members.

115. The members are entitled to vote on amendments to the Bylaws.

116. The Bylaws purport to allow the Directors to amend the Bylaws, but do not preclude amendment of the Bylaws by members, and expressly allow members to vote on matters.

117. Members are entitled to vote on amendment to the Bylaws which is to increase or decrease the vote required for any member action.

118. The vote by members that was sufficient to amend the Bylaws prior to the amendment in question in this case was majority.

B. THE BOARD'S ACTION ALSO VIOLATED THE PLANNED COMMUNITY ACT AS MADE APPLICABLE THROUGH ITS MASTER DECLARATION AND BYLAWS

119. Plaintiffs further assert that Defendant was “submitted to the provisions of the Unit Ownership Act or to any similar act providing for condominium or unit ownership of property,” which includes the Planned Community Act, N.C.G.S. Section 47F, which mandates that removal of directors can be accomplished through a **majority** vote of members. N.C.G.S. § 47F-3-103(b), *Executive Board Members and Officers*.

120. The “Master Declaration of Fairfield Harbour” states that:

For each property subject to the provisions of this master declaration, the provisions to which such property is subjected shall be applicable to each subdivided lot therein, each unit in a tract of land submitted to the provisions of the Unit Ownership Act (Chapter 47A of the North Carolina General Statutes) **or to any similar act providing for condominium or unit ownership of property....** Master Declaration, Exhibit “1,” at p 2 (boldface added).

(2) By the members entitled to vote thereon by two-thirds of the votes cast or a majority of the votes entitled to be cast on the amendment, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles of incorporation authorized by G.S. 55A-10-30....

121. Article II of the Master Declaration, *Fairfield Harbour Property Owners Association, Inc.*, states in relevant part:

1. Every person upon acquiring title, legal or equitable, to any property in Fairfield Harbour subjected to the provisions hereof shall become a member of the Fairfield Harbour Property Owners Association, Inc., a North Carolina non-profit corporation (hereinafter referred to as the "Association")...*Id.* at p 7.

122. Article X of the Master Declaration, *Grantee's Acceptance*, states in relevant part:

1. The grantee of any property subject to the provisions hereof, by acceptance of a deed conveying title...shall accept such deed or contract upon and subject to each and every provision hereof applicable to such property and the agreements herein contained...[and] to keep, observe, comply with and perform such provisions. Ex. "1," p 19.

123. The Bylaws adopt and invoke N.C.G.S. Section 47F no less than six (6) times within the document:

Powers: The board shall exercise the enumerated powers in NCGS 47F & 55A [and]...

Perform any and all other acts for which the authority has been granted herein, or under NCGS 47F and/or 55A....

Pursuant to NCGS 47F-3-108(b) the Board shall, at regular intervals, hold a Board meeting....

If any uniform annual assessment or levied assessment is not paid when due, it shall bear delinquency charges established by the Board in accordance with NCGS 47F....

The Association may place a lien on any Lot or Unit or take any such other action prescribed in accordance with NCGS 47F to collect any unpaid, delinquency, charge, or assessment....

The Association shall indemnify and maintain liability insurance for its Officers, Directors, employees and agents consistent with provisions of the North Carolina Planned Community Act (NCGS 47F)..... Ex. "4," pp 9, 11, 13, 17, 19.

124. N.C.G.S. Section 47F-3-103, *Executive Board Members and Officers*, states, in part:

(b) Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by a declarant.

125. The charter and bylaws of an association constitute a contract between the organization and its members when the members are deemed to have consented to the reasonable regulations and rules of the organization. Traditional rules of contract interpretation apply when assessing whether the association followed its own internal rules and procedures. *Master v. Country Club of Landfall*, 263 N.C. App. 181, 186, 823 S.E.2d 115, 120 (2018); *Homestead at Mills River Prop. Owners Ass'n v. Hyder*, 260 N.C. App. 126, 814 S.E.2d 924 (2018).

126. Because bylaws of a voluntary association are treated as a contract between the entity and its members, *see Master*, 263 N.C. App. at 187, the Court must enforce the unambiguous terms of the bylaws as written.

127. “[I]f the contract is clearly expressed, it must be enforced as it is written.” *Brock v. Porter*, 220 N.C. 28, 28, 16 S.E.2d 410 (1941).

128. “It is a central principle of contract interpretation that the various terms of a contract are to be harmoniously construed, so that every provision is given effect if possible. *WakeMed v. Surgical Care Affiliates, LLC*, 243 N.C. App. 820, 824, 778 S.E.2d 308 (2015) (citation omitted).

129. Bylaw drafters can choose to restrict some powers of the Board, while leaving others unfettered. Observing this distinction allows a harmonious reading of the Bylaws as a whole that better effectuates the intent of the drafters. *See Brenner v. Hound Ears Club, Inc.*, 2022 NCBC 47 (Watauga County).

130. Thus, the express invocation of the Unit Ownership Act in the Master Declaration, along with the plain and express language of the Bylaws, the latter of which repeatedly referenced

Section 47F generally and without limitation, brought Section 47F and its removal requirements under 47F-3-103, squarely into the Association's Bylaws and procedures as a matter of basic contract interpretation. The Association may not incorporate in its governing documents, and utilize N.C.G.S Section 47F in practice, which is a "similar act" regarding unit ownership of property, and then later argue that it is not bound by the provisions of N.C.G.S Section 47F. The Association is estopped from taking such inconsistent and self-serving positions.

C. THE BOARD'S ACTION WAS INVALID DUE TO LACK OF PROPER NOTICE

131. Even assuming *arguendo*, that the Board of Directors did have authority to amend the Bylaws to increase the vote required to remove a Director, they failed to validly take such action on June 28, 2024, due to a lack of proper notice and lack of waiver of proper notice.

132. Resolution 2024-03 states that the amendment of the Bylaws by the Board of Directors was effectuated pursuant to Article IX of the Bylaws. *See* Ex. "6," p 1.

133. Counsel for Defendant asserted that the lack of notice was waived pursuant to North Carolina General Statutes Section 55A-8-23. *See* Ex. "7."

134. Counsel for Defendant wrote:

The Association does not dispute that the amendment in question was raised by motion at the Board's June 28, 2024 meeting. The failure to provide notice of the potential amendment does not, however, invalidate the amendment..."[a] director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting." N.C. Gen. Stat. § 55A-8-23.⁵ *Id.*

⁵ North Carolina General Statute § 55A-8-23, *Waiver of Notice*, states that:

(a) A director may waive any notice required by this Chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to

135. As stated above and as admitted by Counsel for Defendant, five (5) days written notice was not given under Section 55A-10-20/21.

136. The meeting's agenda did not include this amendment to the Bylaws, thus the objecting Directors could not object to holding the meeting or transacting business at the meeting "at the beginning of the meeting"; as nothing objectionable occurred until the meeting was underway. *See* Ex. "5."

137. Moreover, the meeting minutes state that two (2) Directors "opposed" "the motion to add a Bylaw change to the end of the agenda." Ex. "5."

138. The two (2) Directors then persisted in their objection by voting against the amendment. In other words, they did "not thereafter vote for" or "assent to" the amendment. N.C.G.S. § 55A-8-23(b).

139. Due to the Board of Directors' failures to follow proper procedures and to give legally sufficient notice concerning the proposed vote and amendment of the Bylaws, the Directors' vote and purported amendment are *ultra vires* acts of the Association and are *void ab initio*.

FIRST CLAIM FOR RELIEF:
ULTRA VIRES CORPORATE ACTS/PRELIMINARY INJUNCTION
(N.C.G.S. § 55A-3-04(b) and N.C.R.C.P. 65)

140. Plaintiffs hereby reallege and incorporate herein by reference each of the allegations set forth in the paragraphs both above and below as if fully set forth herein.

holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

141. Under N.C.G.S. Section 55A-3-04(b), a corporation's power to act may be challenged either (1) in a proceeding by a member against the corporation to enjoin the act, or (2) in a proceeding by the corporation, whether directly or derivatively, against an incumbent or former director, officer, or agent of the corporation.

142. As set forth above, the Board of Directors of the Association failed to follow the proper procedure set forth in the Bylaws, and it violated applicable provisions of Chapters 55A and 47F of the North Carolina General Statutes in seeking to amend the Bylaws.

143. In addition, the Board of Directors' actions were invalid for failing to provide proper notice to the Board of Directors regarding the vote, which was not waived. No notice of this proposed amendment to the Bylaws was provided in advance of the meeting of June 28, 2024, and the item was not listed on the agenda. *See* Ex. "5."

144. Plaintiffs have been injured in that their majority vote to remove four (4) Directors in September 2024 was deemed to have failed because the vote for removal did not reach a supermajority of 67%.

145. Further, Plaintiffs have been injured and are suffering an ongoing injury in that a contractual provision of the Bylaws was changed, unlawfully and to their detriment, requiring them to meet a higher voting requirement in the event that they wish to remove a Director.

146. The purported amendment of the Bylaws altered the requirements for participation in the governance and affairs of the Association applicable to the members of the Association.

147. A permanent, mandatory injunction should be entered, requiring Defendant to announce to the members that: (i) the Board vote held to amend the Bylaws on June 28, 2024 was *ultra vires* and *void ab initio*; (ii) the purported amendment of the Bylaws was *ultra vires* and *void ab initio*; (iii) the 2020 Bylaws still apply to the operation and governance of the Association, with

full force and effect; (iv) and that the majority vote to remove the four (4) Directors in September 2024 passed.

148. The injunction should also contain such provisions as are necessary to remove or cancel the *ultra vires* amendments of the Bylaws of record with the Register of Deeds and Secretary of State and to restore the 2020 Bylaws.

149. The injunction should further require that all purported acts taken by the Board of Directors or the Association pursuant to purported authority contained in the *ultra vires* amended Bylaws, to include the Board's determination that the 52.3% vote to remove the four (4) Directors or any of their replacements for the remaining portions of any term without cause in September 2024 "did not pass," be declared null and void for lack of authority, that said Directors so voted for removal be immediately removed, as such vote did in fact pass under the majority requirement in the proper Bylaws, and that any purported actions, decisions, and/or votes by any of the four (4) Directors or replacements that were voted for removal are null and void for lack of authority.

150. This injunction is necessary to restore the *status quo* which was in effect prior to June 28, 2024, and to prevent further and ongoing harm to Plaintiffs.

151. Plaintiffs have demonstrated a reasonable likelihood that they will prevail on the merits of their case and that irreparable harm will occur if an injunction is not granted.

152. There exists a reasonable apprehension of irreparable loss to Plaintiffs with respect to the fact that the Directors they voted to remove in September 2024 have not been removed according to their majority vote, and an injunction is reasonably necessary to protect the rights of Plaintiffs.

153. There exists a reasonable apprehension of irreparable loss to Plaintiffs with respect to their ability to remove Directors that may not be acting in the best interests of the Association

or for which other cause may exist for their removal, and an injunction is reasonably necessary to protect the rights of Plaintiffs.

154. Moreover, the removed Directors cannot be allowed to purport to act as Board members for the corporation when in fact they have no such authority to do so.

155. Proper replacements must be put in place pursuant to the applicable laws and governing documents. The corporation cannot be allowed to be run by those without legal authority to do so.

156. Plaintiffs move, pursuant to Rule 65 of the North Carolina Rules of Civil Procedure, and N.C.G.S. Section 55A-3-04, that this Court, after the giving of due notice and an opportunity to be heard to Defendant, enter a Preliminary Mandatory Injunction as outlined above.

157. Plaintiffs further request that this Preliminary Injunction be converted to a Permanent Injunction, upon a final determination in favor of Plaintiffs in this matter.

158. Fairfield Harbour is a planned community under N.C.G.S. Section 47F, created in this State before January 1, 1999, and accordingly Section 47F-3-120, *Declaration Limits on Attorneys' Fees*, applies. N.C.G.S. § 47F-1-102; *see* Ex. 1, p 18.

159. Plaintiffs seek an award of damages in excess of Twenty-Five Thousand Dollars (\$25,000.00) as well as an award of attorney fees under N.C.G.S. Sections 55A-3-04, 47F-3-120, and/or as otherwise permitted by law.

SECOND CLAIM FOR RELIEF:
DECLARATORY JUDGMENT ACTION
(N.C.G.S. § 1-253 et seq)

160. Plaintiffs hereby reallege and incorporate herein by reference each of the allegations set forth in the paragraphs both above and below as if fully set forth herein.

161. Plaintiffs bring this declaratory judgment action pursuant to the Uniform Declaratory Judgment Act, set forth in North Carolina General Statutes, Section 1-253 *et seq.*, and under the provisions of Section 1, Article 26 of the North Carolina General Statutes, for the purposes of obtaining from the Court a judgment and declaration with respect to the validity of certain acts of the Board of Directors, in light of the language contained in the Bylaws of Fairfield Harbour, as well as the mandates of Chapters 55A and 47F of the North Carolina General Statutes.

162. Plaintiffs have joined in this action all ascertainable parties who may be affected by the declaration. Upon information and belief, there exist no other parties who are necessary to the conduct of this action.

163. An actual justiciable controversy exists, and thus, relief in the form of a declaratory judgment is proper.

164. Plaintiffs contend that the Board of Directors unlawfully purported to amend the Bylaws by the Board vote of June 28, 2024. Plaintiffs further contend that the Board of Directors failed to comply with the language of the Bylaws and violated applicable provisions of Chapters 55A and 47F in their purported amendment of the Bylaws. Plaintiffs further contend that the Board of Directors failed to provide legally sufficient notice of this motion and vote, with respect to content and timing.

165. Upon information and belief, the Board of Directors failed to properly amend the Bylaws in other ways which will be proven at trial. Plaintiffs contend that the purported amendments reflected by are *ultra vires* acts of the Association, and are therefore *void ab initio*.

166. Upon information and belief, the Board of Directors contend that all amendments of the Bylaws were proper and that all actions taken thereto are valid and lawful.

167. Plaintiffs have been damaged by the acts of the Board of Directors in purportedly amending the Bylaws of the Association without proper authority and in violation of North Carolina law.

168. Pursuant to N.C.G.S. Section 1-254, Plaintiffs request that this Court invoke its jurisdiction under the Declaratory Judgment Act to construe the Bylaws of the Fairfield Harbour Property Owners Association, Inc., as well as the provisions of Chapters 55A and 47F relating to amendment, in order to determine the validity of the purported amendment (Exs. "3," and "6"), the sufficiency of the notice (Ex. "5"), and the validity of all subsequent actions taken pursuant to the purported authority contained in Exhibit "6," and specifically its failure to remove the four (4) Directors, Pendleton, Albertini, Broody, Pfefferkorn and/or their replacements (in this case, Debbie Harris replaced Gayle Albertini and Larry Blasden replaced David Pfefferkorn), that a majority of the Association voted to remove in September 2024.

169. Plaintiffs further request that the Court issue a Declaratory Judgment declaring the amendment to the Bylaws requiring a supermajority vote to be *void ab initio*, and striking it from the record, and further, reversing or declaring null and void, all subsequent actions taken pursuant to the purported amendment to the Bylaws, and declare the majority vote for removal of the four members of the Board of Directors on or about September 24, 2024 was sufficient for their removal and that as of September 24, 2024, said four (4) Directors were removed as Board members.

170. In the event that such a Declaratory Judgment is entered, Plaintiffs pray unto this Court, pursuant to N.C.G.S. Section 1-259, for such Supplemental Relief as is necessary to put the declaration into effect, including but not limited to, striking and cancelling the Amended Bylaws

and Resolutions of record, and restoring the previous Bylaws that were in effect prior to June 28, 2024.

171. Fairfield Harbour is a planned community under N.C.G.S. Section 47F, created in this State before January 1, 1999, and accordingly Section 47F-3-120, *Declaration Limits on Attorneys' Fees*, applies. N.C.G.S. § 47F-1-102; *see Ex. 1*, p 18.

172. Pursuant to authority contained in N.C.G.S. Sections 55A-3-04, and/or 47F-3-120, Plaintiffs request reimbursement for all attorney fees spent in order to obtain this declaration, injunction, and supplemental relief.

MOTION FOR PRELIMINARY INJUNCTION
(N.C.R.C.P. 65)

1. Plaintiffs hereby reallege and incorporate herein by reference each of the allegations set forth in the paragraphs both above and below as if fully set forth herein.

2. A preliminary injunction is reasonably necessary to protect Plaintiffs' rights.

3. Plaintiffs' right to relief is clear and Plaintiffs have demonstrated a substantial likelihood of success on the merits, as set forth above.

4. Plaintiffs will suffer irreparable harm if the injunction is not granted.

5. Plaintiffs continue to suffer ongoing harm with each day that the current Board members remain on the Board and continue to have and exert the power to make decisions affecting Plaintiffs' rights and property.

6. Plaintiffs request that the Court enjoin the four (4) Directors or their replacements whom the members voted by a majority to remove, currently identified as Les Pendleton, Debbie Harris, Robert Broody, and Larry Bladen, from taking any action as members of the Board of Directors now and for the duration of the pending litigation. Failure to enjoin the acts to said

Directors during the pendency of this action will expose the corporation to ongoing actions taken without proper authority.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

WHEREFORE, Plaintiffs respectfully pray unto the Court for the following relief:

1. That Plaintiffs recover actual damages of Defendant where allowed by law, in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00); and
2. That the Court determine that the acts of the Board of Directors in amending the Bylaws on or about June 28, 2024 were *ultra vires* and *void ab initio* under Section 55A-3-04, and issue injunctive relief necessary to restore the *status quo* in effect prior to the June 28, 2024 vote and amendment; and
3. That the Court enter a Declaratory Judgment finding that the purported amendment of the Bylaws are *ultra vires* and *void ab initio*, and any subsequent acts taken pursuant to the purported authority of the Amended and Restated Bylaws, to include the failure to remove the four (4) Directors that Plaintiffs/members voted by a majority to remove in September 2024 and are and will be *void ab initio*, and that any purported actions, decisions, and/or votes by any of the four (4) Directors or replacements that were voted for removal are null and void for lack of authority and are and will be *void ab initio*; and
4. That the Court enter such supplemental relief as is necessary to put the declaration into effect, to include removal of Directors Les Pendleton, Debbie Harris, Robert Broody, and Larry Blasden, to strike the amended Bylaws and Resolution 2024-03, and to restore the previous version of the Bylaws of Fairfield Harbour (2020 Bylaws, Ex. "4"); and

5. That the Court enter a Preliminary Injunction enjoining the four Directors of Fairfield Harbour Property Owners Association, Inc. or their replacements—currently identified as Les Pendleton, Debbie Harris, Robert Broody, and Larry Blasden—from taking any action whatsoever as members of the Board of Directors now and for the duration of the pending litigation.

6. That Plaintiffs recover attorney fees of Defendant under N.C.G.S. Sections 55A-3-04 and/or 47F-3-120, or in the discretion of the Court; and

7. That Plaintiffs have trial by jury on all issues so triable; and

8. That the costs of this action be taxed against Defendant; and

9. For such further and other relief as this Court deems just and proper.

This the 7th day of February, 2025.

HARVELL AND COLLINS, P.A.
Attorneys for Plaintiffs

By:

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*This email address to be used for all correspondence other than service.

VERIFICATION

Now comes DANIEL RITTER, and states that he has previously read the foregoing COMPLAINT, and that the same is true of his own knowledge, except as to those matters and things herein stated on information and belief, and as to such matters and things, he believes them to be true.



DANIEL RITTER

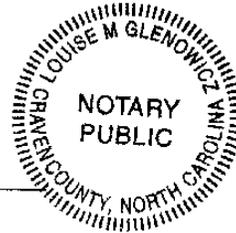
NORTH CAROLINA

COUNTY OF CARTERET

Sworn to and subscribed before me this 2nd day of February, 2025.

Louise M. Glawick
Notary Public

My Commission Expires: 3/1/2026



VERIFICATION

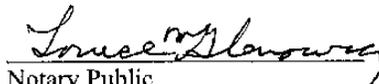
Now comes MICHAEL C. BLACK, and states that he has previously read the foregoing COMPLAINT, and that the same is true of his own knowledge, except as to those matters and things herein stated on information and belief, and as to such matters and things, he believes them to be true.


MICHAEL C. BLACK

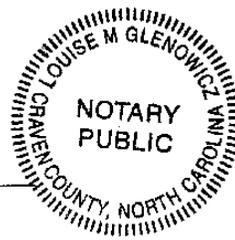
NORTH CAROLINA

COUNTY OF CARTERET

Sworn to and subscribed before me this 2nd day of February, 2025.


Notary Public

My Commission Expires: 3/1/2026



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STATE OF NORTH CAROLINA
COUNTY OF CRAVEN

MASTER DECLARATION OF
FAIRFIELD HARBOUR

THIS MASTER DECLARATION OF FAIRFIELD HARBOUR, made and entered into this the 3rd day of October, 1979, by and between FAIRFIELD HARBOUR, INC., a North Carolina corporation with its principal place of business in Craven County, North Carolina (hereinafter referred to as "FHI"); and PROSPECTIVE PURCHASERS of such properties or interests therein, including interval ownership interests, now or hereafter owned by FHI as may be subjected to all or any portion of the provisions hereof (hereinafter referred to as "Purchasers");

W I T N E S S E T H :

WHEREAS, FHI is the owner of certain properties in Number Two Township, Craven County, North Carolina, a portion of which properties were conveyed to FHI by deed from Treasure Lake of North Carolina, Inc, dated December 9, 1977, and recorded in Book 901, at Page 504, in the office of the Register of Deeds of Craven County; and,

WHEREAS, a portion of the aforesaid properties, together with certain properties adjacent or contiguous thereto, or in the general vicinity thereof, comprise a development known as "Fairfield Harbour;" and,

WHEREAS, to insure the orderly development of Fairfield Harbour, FHI desires to set forth certain provisions in a master declaration, all or any portion of which provisions may be made applicable to the aforesaid properties and to such other properties adjacent or contiguous thereto or in the general vicinity thereof as now or hereafter may be owned by FHI and which FHI may choose to subject to the provisions of such master declaration.

NOW, THEREFORE, for and in consideration of the premises and the mutual benefits to accrue to FHI and Purchasers by the subjecting of such properties as FHI shall subject to the provisions hereof, FHI declares that any such

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property so subjected to the provisions of this Master Declaration of Fairfield Harbour shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to such of the following restrictions as such property may be subjected to by an instrument in writing executed by FHI and duly recorded in the office of the Register of Deeds of Craven County, North Carolina, all of which provisions are declared and agreed to be in furtherance of the general plan of Fairfield Harbour, and all of which provisions shall be deemed to be restrictions running with the land and binding on Purchasers, their heirs, successors and assigns; provided, however, that until such time as FHI shall subject such properties to the provisions hereof in the manner above provided, such properties shall be held by FHI, its successors and assigns, free from the provisions hereof.

For each property subjected to the provisions of this master declaration, the provisions to which such property is subjected shall be applicable to each subdivided lot therein, each unit in a tract of land submitted to the provisions of the Unit Ownership Act (Chapter 47A of the North Carolina General Statutes) or to any similar act providing for condominium or unit ownership of property, and to such other divisions of land or interests therein, including interval ownership interests, as FHI shall specify, and the terms "property" and "properties" as used herein shall be deemed to include all such interests.

The restrictions referred to above are as follows:

ARTICLE I

RECREATIONAL AMENITIES CHARGE

1. FHI shall have the power to levy an annual charge, the amount of said charge to be determined solely by FHI after consideration of current and future needs of FHI for the reasonable and proper operation, maintenance, repair and upkeep of all recreational amenities owned by FHI and actually provided for the use of Purchasers at the date of levy of such charge, such recreational amenities to include but not be

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limited to dams, marinas, beaches, river and canal access tracts, golf courses, tennis courts, swimming pools, campgrounds, clubhouses and adjacent clubhouse grounds.

2. The power to levy such a charge as provided in Paragraph 1 of this Article shall inure also to the successors and assigns of each such recreational amenity; provided, however, that no charge shall be levied by any such successor or assign within twelve (12) months following the date of levy by FHI, or by the predecessor in title to such successor or assign, of a charge as provided herein for the maintenance, repair and upkeep of the recreational amenity or amenities acquired by such successor or assign.

3. No such charge ever shall be levied against properties owned by FHI, by Fairfield Harbour Property Owners Association, Inc. or by any corporation or corporations that may acquire title to or operate any water or sewer utilities serving the area, or any dams, marinas, beaches, river and canal access tracts, golf courses, tennis courts, swimming pools, campgrounds, clubhouses and adjacent clubhouse grounds, or other like recreational facilities, regardless of whether such facilities are used by persons other than purchasers.

4. Charges to be levied by FHI, its successors and assigns, for the operation, maintenance, repair and upkeep of the recreational amenity or amenities during the ensuing year shall be determined on or before the first day of April of each year.

5. Each such charge shall become a lien or encumbrance upon the property upon which same is levied as of the aforesaid first day of April, and acceptance of each deed for such property or the execution of a contract for the purchase of such property upon which such a charge has been levied shall be construed to be a covenant to pay each such charge. Any property acquired shall be taken subject to the lien for any unpaid prior charges, and every person who shall become the owner of the title, legal or equitable, to any property subject

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to such a charge by any means whatsoever (other than a mortgagee under a mortgage or a trustee under a deed of trust) shall be deemed conclusively to have covenanted to pay to FHI, its successors or assigns, any such charge or charges, provided, however, that in the event of property which has been submitted to the provisions of the Unit Ownership Act or to any similar act providing for condominium or unit ownership of property, where the mortgagee of a first mortgage of record or other purchaser obtains title to the property together with the interest in the common elements attributable to said property as a result of foreclosure of the first mortgage, such acquirer of title, his or its successors and assigns, shall not be liable for such charges which became due prior to the acquisition of title as a result of the foreclosure. Such unpaid charges shall be deemed to be common expenses collectable as provided in the applicable declaration submitting the property to the provisions of such act; and in such event, such acquirer of title shall be responsible for payment of such charges only to the extent that such acquirer of title is responsible for the payment of other common expenses.

6. Each such charge shall become due and payable on the first day of May of the year in which such charge is levied, and each such charge shall bear interest from its due date at the rate of six percent (6%) per annum, which interest until paid also shall constitute a lien or encumbrance upon the property to which said charge is applicable.

7. Payment of all charges provided for herein, whether levied by FHI, its successors or assigns, shall be made to FHI, its agents, successors or assigns at Fairfield Harbour, Inc., P. O. Box 1738, New Bern, North Carolina 28560, or at such replacement address or addresses of FHI, its agents, successors or assigns as may be indicated hereafter by an instrument or instruments in writing, executed by FHI, its successors or assigns, and duly recorded in the office of the Register of Deeds of Craven County, North Carolina, with a

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marginal entry made upon this instrument as recorded in the office of the Register of Deeds of Craven County, North Carolina.

8. The lien of each charge as provided for hereunder may be foreclosed by FHI, its successors or assigns, at any time following the due date of the charge levied. In addition and as an alternative to the remedy of lien foreclosure, FHI, its successors and assigns, shall have the right and option to sue the owner of the property against which such charge was levied and any successor owner or owners of same for any and all unpaid charges, interest, costs and reasonable attorneys' fees in any court of competent jurisdiction as for a debt owed by such owner or successor owner to FHI, its successors or assigns.

9. Upon written request signed by the owner of the property from which a certificate hereunder is requested, by the prospective purchaser of such property, or by the attorney of either, which request is in the form provided on Attachment A attached hereto and incorporated herein by reference, and is mailed to FHI, its agents, successors or assigns, at the address or respective addresses last recorded in the office of the Register of Deeds of Craven County, North Carolina, as provided in Paragraph 7 of this Article, and which request is accompanied by a check in the sum of Five Dollars (\$5.00) made payable to the entity upon which such request is made, FHI, its agents, successors or assigns, shall furnish a certificate in writing signed on behalf of FHI, its successors or assigns, certifying either that all charges levied by such entity on a specified property have been paid or enumerating therein all such charges and interest thereon which remain unpaid. Such certificate shall be conclusive evidence of payment of all charges levied by the entity issuing same other than those enumerated therein as remaining unpaid.

10. In the event that the request for a certificate pursuant to Paragraph 9 of this Article is mailed by certified

BOOK 051 PAGE 00

mail, return receipt requested, and such request actually is received by FHI, its agents, successors or assigns, as evidenced by the return receipt therefor, the failure of FHI, its agents, successors or assigns, to furnish such certificate to the requesting party at the address stated in such written request within thirty (30) days following the receipt of such request by FHI, its agents, successors or assigns, shall extinguish any charge theretofore levied by such non-responding entity upon the property for which such certificate is requested or any such charge levied upon the property for which such certificate is requested within thirty (30) days subsequent to the date of actual receipt of such request by FHI, its agents, successors or assigns.

11. Any and all liens as provided for herein shall be subordinate to the lien of a bona fide mortgage or deed of trust representing a first lien at any time placed upon any property for the purpose of permanent financing and/or financing of the construction of a residence or other improvement thereon and recorded in accordance with the laws of the State of North Carolina.

12. All funds accumulated from the charges levied hereunder by FHI, its successors and assigns, shall be separately reflected on the books of account of the owner or owners of said amenities pertaining to the recreational facilities of Fairfield Harbour.

13. FHI, its agents, successors or assigns, shall have the right to publish a list of properties subject to charges hereunder, which charges are in a delinquent status; and FHI, its successors and assigns, shall have the right to suspend the use of all recreational amenities owned by FHI, its successors and assigns, by any person or persons basing the right of use of such recreational amenities upon the ownership or possession of any property upon which charges provided for hereunder are delinquent.

14. Nothing contained herein shall be interpreted or construed to prevent PHJ, its successors or assigns, from contracting with persons other than Purchasers for the use of any amenities owned or operated by them, or any of them, and from charging any user, including Purchasers, for the use of any such amenities, including charges for individual services or goods provided users through such facilities.

15. The term "successors and assigns" as used herein shall be deemed to include any and all successors and assigns of PHJ in and to the recreational amenities hereinabove referred to, other than the Fairfield Harbour Property Owners Association, Inc., it being understood and agreed that the right to levy charges for the maintenance, repair and upkeep of such recreational amenities as may be conveyed to the Fairfield Harbour Property Owners Association, Inc. shall be as provided for in Article II and not as provided for in this Article.

ARTICLE II

FAIRFIELD HARBOUR PROPERTY OWNERS ASSOCIATION, INC.

1. Every person upon acquiring title, legal or equitable, to any property in Fairfield Harbour subjected to the provisions hereof shall become a member of the Fairfield Harbour Property Owners Association, Inc., a North Carolina non-profit corporation (hereinafter referred to as the "Association"), and as long as he is the owner of any such property, he must remain a member of the Association; provided, however, that there shall be only one (1) regular membership per property regardless of the manner or number of names in which title to same may be held with the exception of property submitted to the provisions of the Unit Ownership Act or to any similar act providing for condominium, unit, or interval ownership of property, in which event and if it is otherwise provided in the declaration submitting such property to the provisions of such act, membership shall be as so provided. Such membership is not intended to apply to those persons who hold an interest in any property merely as security for the perform-

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ance of an obligation to pay money, e.g., mortgages, deeds of trust, or real estate contract purchases. However, if such a person should realize upon his security and become the real owner of a property, he then will be subject to all the requirements and limitations imposed in this Article on owners of properties within Fairfield Harbour and on members of the Association, including those provisions with respect to payment of all charges.

2. The general purpose of the Association is to further and promote the community welfare of property owners in Fairfield Harbour.

3. The Association shall be responsible for the operation, maintenance, repair and upkeep of the parks and other common areas or amenities now or hereafter owned by it within Fairfield Harbour. The Association also shall promulgate and enforce all regulations necessary for the use and enjoyment of such parks, common areas and such other properties as it from time to time may own.

4. The Association shall have all the powers that from time to time are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, including but not limited to the power to levy against every member of the Association an annual charge per property subjected to the provisions of this Article or per associate member, the amount of said charge to be determined by the Board of Directors of the Association after consideration of current maintenance needs and future needs of the Association for the purposes set forth in its Articles of Incorporation. No such charge ever shall be made against, or be payable by FHI, the Association itself, or any corporation or corporations that may be created to acquire title to or operate any water or sewer utilities serving the area, or any dams, marinas, beaches, river and canal access tracts, golf courses, tennis courts, swimming pools, campgrounds, clubhouses and adjacent clubhouse grounds, or other like recreational facilities, regardless of

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whether such facilities are used by persons other than the owners of property subjected to the provisions of this Article. The Association also may charge any user or member fees for the use of any amenities owned or operated by it, including charges for individual services or goods provided members through such facilities.

(a) Every annual charge so made shall be paid by the member to the Association or its designee on or before the first day of May of each year for the ensuing year. The Board of Directors of the Association shall fix the amount of the annual charge per property or per associate member on or before the first day of April of each year, and written notice of the charge so fixed shall be sent to each member; provided, however, that fees for usage and charges for individual services or goods received by members through the facilities of the Association shall be paid at least monthly or more often as may be required.

(b) If any annual charge shall not be paid when due, it shall bear interest from the date of delinquency at the rate of six percent (6%) per annum.

The annual charge, if unpaid within thirty (30) days of its due date, shall become a lien or encumbrance upon the property and acceptance of each deed for such property or the execution of a contract for the purchase of such property shall be construed to be a covenant to pay the charge. The Association may publish the names of the delinquent members, and every such lien may be foreclosed at any time. Any property acquired is taken subject to the lien for any unpaid prior charges, and every person who shall become the owner of the legal or equitable title to any property subjected to the provisions of this Article by any means shall be held conclusively to have covenanted to pay the Association or its designee any such charge or charges; provided, however, that where the property has been submitted to the provisions of the Unit Ownership Act or to any similar act providing for condo-

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minimum, unit, or interval ownership of property, where the mortgagee of a first mortgage of record or other purchaser obtains title to the property together with the interest in the common elements attributable to said property as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for such charges which became due prior to the acquisition of title as a result of the foreclosure. Such unpaid charges shall be deemed to be common expenses collectible as provided in the applicable declaration submitting the property to the provisions of such act; and in such event, such acquirer of title shall be responsible for payment of such charges only to the extent that such acquirer of title is responsible for the payment of other common expenses.

In addition and as an alternative to the remedy of lien foreclosure for such annual charge, the Association shall have the right and option to sue for any and all unpaid charges, interest, costs and reasonable attorneys' fees in any court of competent jurisdiction as for a debt owed by any delinquent member to the Association.

(c) The Association upon demand at any time shall furnish a certificate in writing signed by an officer of the Association certifying that the charges on a specified property have been paid or that certain charges against said property remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any charges therein stated to have been paid.

B. The fund accumulated as the result of the charges levied by the Association shall be used exclusively to promote and operate the recreational facilities of, and the health, safety and welfare of the members and associate members of the Association and for the improvement and maintenance of those areas designated as parks, and other property and facilities.

PAGE 0004 OF 0005

ties within Fairfield Harbour which shall have been conveyed to or acquired by the Association.

6. In the event an owner of property subjected to the provisions of this Article shall fail to maintain the property and/or the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association shall have the right, through its agents and employees, to enter upon said property and clear, clean, repair, maintain and restore the property and the exterior of any building and any other improvements erected thereon. Such right shall not be exercised unless two-thirds (2/3) of such Board of Directors shall have voted in favor of its being exercised. The cost of such maintenance shall be added to and become part of the annual charge to which such property is subject and shall constitute a lien on such property.

7. The Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the right to use of any member of the recreational facilities of the Association or of FHI or of any other corporation owning or operating such facilities:

(a) For any period during which any Association charge of any kind whatsoever owed by the member remains unpaid;

(b) During the period of any continuing violation by the member of any restrictive covenant of Fairfield Harbour applicable to the property of the member, after the existence of the violation shall have been declared by the Board of Directors of the Association; and,

(c) During the period that any bill for water, sewer, garbage, cable TV or any other utility or service rendered to the member by FHI, its successors or assigns, shall remain unpaid.

8. The lien of a mortgage or deed of trust representing a first lien placed upon any property for the purpose of permanent financing and/or constructing a residence or other

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improvement thereon recorded in accordance with the laws of North Carolina, from the date of recordation, shall be superior to any and all such liens provided for in this Article.

ARTICLE III

RECREATIONAL AMENITIES

1. Every park, recreational facility, and other amenity within Fairfield Harbour in a private park, facility or amenity and neither FHI's execution or recording of any plat nor any other act of FHI with respect to Fairfield Harbour is or is intended to be or shall be construed as a dedication to the public of any of said parks, recreational facilities and amenities other than as reflected herein. An easement for the use and enjoyment of each of the areas designated as parks is reserved to FHI, its successors and assigns; to the persons who are from time to time members or associate members of the Fairfield Harbour Property Owners Association, Inc. (hereinafter referred to as the "Association"); to the members and owners of any recreational facility; to the residents, tenants and occupants of any multi-family residential building, guest house, inn or hotel facility, and all other kinds of residential structures that may be erected within the boundaries of Fairfield Harbour; and to the invitees of all of the aforementioned persons, the use of which shall be subject to such rules and regulations as may be prescribed by FHI or the Association, if the Association is the owner of the facility or property involved.

2. The ownership of all of the recreational amenities within Fairfield Harbour which may include but shall not be limited to dams, marinas, beaches, river and canal access tracts, golf courses, tennis courts, swimming pools, campgrounds, clubhouses and adjacent clubhouse grounds shall be in FHI or its successors, grantees, or assigns, and the use and enjoyment thereof shall be on such terms and conditions as FHI, its successors, grantees or assigns, from time to time shall license; provided, however, that any and all of such amenities

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may be conveyed to the Association, which conveyance shall be accepted by it, provided the same is free and clear of all financial encumbrances.

ARTICLE IV

PROPERTY CONTROL COMMITTEE

1. All plans and specifications for any structure or improvement whatsoever to be erected on or moved upon or to any property, and the proposed location thereof on any property, the construction material, the roofs and exterior color schemes, any later changes or additions after initial approval thereof and any remodeling, reconstruction, alterations, or additions thereto on any property shall be subject to and shall require the approval in writing before any such work is commenced of the Property Control Committee (hereinafter referred to as the "Committee"), as the same from time to time is composed.

2. The Committee shall be composed of three (3) members. The Board of Directors of the Fairfield Harbour Property Owners Association, Inc. (hereinafter referred to as the "Association") shall have the right to appoint and remove members of the Committee.

3. There shall be submitted to the Committee two (2) complete sets of the final plans and specifications for any and all proposed improvements, the erection or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any property unless and until the final plans, elevations, and specifications therefor have received written approval as provided in this Article. Such plans shall include plot plans showing the location on the property of the building, wall, fence or other structure proposed to be constructed, altered, placed or maintained, together with the proposed construction material, color schemes for roofs and exteriors thereof and proposed landscape planting. A filing fee of \$30.00 shall accompany the submission of such plans to defray Committee

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expenses. No additional fee shall be required for resubmission of plans revised in accordance with Committee recommendations.

4. The Committee shall approve or disapprove plans, specifications and details within thirty (30) days from the receipt thereof. One (1) set of said plans, specifications and details with the approval or disapproval endorsed thereon shall be returned to the person submitting them and the other copy thereof shall be retained by the Committee for its permanent files.

5. The Committee shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of the restrictions applicable to such property, if the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such property or with the adjacent buildings or structures; if the plans, specifications and details submitted are incomplete, or in the event the Committee deems the plans, specifications or details, or any part thereof, to be contrary to the interests, welfare or rights of all or any part of the property subject to the provisions of this Article, or the owners thereof. The decisions of the Committee shall be final and not subject to appeal or review.

6. Neither PH1, the Association, the Committee nor any architect or agent thereof shall be responsible in any way for any defects in any plans, specifications or details submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans, specifications and details.

7. No pier, dock, float, boat shelter or other structure shall be constructed or placed on or extending into any river, creek, waterway or canal except with the written approval of the Committee, and in the event that the Committee shall approve plans, specifications and details for any such structure, such approval shall constitute a mere revocable

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license from FHI or its successor or successors in interest to the said river, creek, waterway or canal for the construction, placement and maintenance of the proposed structure; and the Committee may order removal thereof by such licensee at any time and without cause therefor. Additionally, the Committee shall not be responsible in any way for the securing of any necessary governmental permits for any such structure.

8. Prior to commencement of construction, a building certificate must be obtained from the Committee; and prior to occupancy, an occupancy permit must be obtained from the Committee. The Committee or its agents shall have the right to inspect all construction to insure that the structure is in accordance with the approved plans, specifications and details. No structure or improvement shall be made unless it conforms strictly to the approved plans, specifications and details.

9. Notwithstanding any provision of this Article to the contrary, neither this Article nor any provision hereof shall be applicable to properties owned by FHI so long as FHI shall remain the owner thereof, but each and every provision of this Article shall become effective immediately upon the conveyance of such property to a Purchaser.

ARTICLE V

REFUSE AND GARBAGE COLLECTION

In order to enhance the appearance and orderliness of Fairfield Harbour, FHI hereby reserves for itself, its successors and assigns, the exclusive right to operate, or from time to time to grant an exclusive license to a third party to operate, a commercial scavenging service for the purpose of removing garbage, trash and other like household refuse. Such refuse collection and removal service shall be provided not less often than once each week on a day or days designated by FHI or its successors or assigns. When such service shall be made available, all owners of property subjected to the provisions hereof shall utilize same, the rate therefor to be commensurate with the rates charged by commercial scavengers.

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serving other developments of high standards in the area, such rates to be subject to change from time to time.

ARTICLE VI

RIVERS, CANALS AND PROPERTIES CONTIGUOUS THERETO

As between FHI and Purchasers, their heirs and assigns, the water in and land under rivers, creeks, waterways and canals as shown on any plat is and shall be owned by FHI, its successors and assigns. The title that will be acquired by any grantee of FHI to any property fronting on a river, creek, waterway or canal (and by the successors and assigns of such grantee) shall extend only to such point as is designated on such plat and in no event shall it extend beyond the shoreline (i.e., high water mark) or edge of the river, creek, waterway or canal to which such property is fronting or contiguous. No such grantee, nor any of such grantee's successors or assigns, shall have any right with respect to any river, creek, waterway or canal, the land thereunder, the water therein, or its elevation, use, or condition, and none of said properties shall have any riparian rights or incidents appurtenant; provided, further, that title shall not pass by reliction or submergence or changing water elevations.

ARTICLE VII

EASEMENTS

1. FHI reserves for itself, its successors and assigns, for purposes it deems incident to Fairfield Harbour, the following easements and/or rights of way:

(a) A fifteen-foot wide easement and right of way over each property as FHI may deem necessary for the use and maintenance of storm and sanitary sewers and the installation of utility services.

(b) A ten-foot wide easement along each side of all road rights of way and a seven and one-half-foot wide easement along each side of all other property boundary lines for the purpose of installing, operating and maintaining utility lines and mains.

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(c) The right to trim, cut and remove any trees and brush and to locate guy wires and braces wherever necessary for the installation, operation and maintenance of, together with the right to install, operate and maintain, utility lines, gas, water and sewer mains and other services for the convenience of the property owners and appurtenances thereto.

2. FHI reserves for itself, its successors and assigns, an exclusive easement for the installation and maintenance of radio and television transmission cables within the rights of way and easement areas reserved and defined in this Article.

3. On each property, the rights of way and easement areas reserved by FHI or dedicated to public utility purposes shall be maintained continuously by the property owner but no structures, plantings or other materials shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of utilities, which may change the direction of flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or which damage or interfere with established slope ratios or create erosion or sliding problems; provided, however, that where the existing location of a drainage channel would hinder the orderly development of a property, the drainage channel may be relocated, provided such relocation does not cause an encroachment on any other property in Fairfield Harbour. Improvements within such areas also shall be maintained by the respective property owners except those for which a public authority or utility company is responsible.

4. Every property in Fairfield Harbour that lies contiguous to a river, creek, waterway or canal shall be subject to a flowage easement to an elevation on the lot equal to the high water elevation of such river, creek, waterway or canal.

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ARTICLE VIII
MUTUALITY OF BENEFIT AND OBLIGATION

The provisions set forth herein are made for the mutual and reciprocal benefit of each and every property in Fairfield Harbour and are intended to create mutual, equitable servitudes upon each of said properties in favor of each and all of said properties; to create reciprocal rights between the respective owners of all of said properties; to create a privity of contract and estate between the grantees of said properties, their heirs, successors and assigns, and shall, as to the owner of each such property, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other properties in Fairfield Harbour and their respective owners.

ARTICLE IX
REMEDIES

1. FHI, the Fairfield Harbour Property Owners Association, Inc. (hereinafter referred to as the "Association"), any owner of property or any party to whose benefit these restrictions inure may proceed at law or in equity to prevent the occurrence, continuation or violation of any provision hereof; and the court in any such action may award the successful party reasonable expenses in prosecuting such action, including attorneys' fees.

2. The remedies herein specified are cumulative, and this specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law, in equity, or under any statute. No delay or failure on the part of FHI, the Association or an aggrieved party to invoke an available remedy in respect to a violation of any provision hereof shall be held to be a waiver by that party of, or an estoppel of that party to assert, any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

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ARTICLE X

GRANTEE'S ACCEPTANCE

1. The grantee of any property subject to the provisions hereof, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from FHI or a subsequent owner of such property, shall accept such deed or contract upon and subject to each and every provision hereof applicable to such property and the agreements herein contained, and also the jurisdiction, rights and powers of FHI, and by such acceptance for himself, his heirs, successors and assigns, shall covenant, consent and agree to and with FHI, and to and with the grantees and subsequent owners of each of the properties within Fairfield Harbour, to keep, observe, comply with and perform such provisions.

2. Each such grantee also agrees, by such acceptance, to assume, as against FHI, its successors and assigns, all of the risks and hazards of ownership or occupancy attendant to such property, including but not limited to its proximity to any recreational facility.

ARTICLE XI

SEVERABILITY

Each of the provisions hereof hereby is declared to be independent of, and severable from, the rest of the provisions and of and from every other one of the provisions and of and from every combination of the provisions. Therefore, if any of the provisions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the provisions hereof.

ARTICLE XII

CAPTIONS

The captions preceding the various provisions hereof are for convenience of reference only, and none of them shall

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be used as an aid to the construction of any provision of this Declaration.

ARTICLE XIII

CONFLICTING PROVISIONS

To the extent that any provision hereof shall conflict in any manner with a provision set forth in the instrument by which the provisions of this Declaration are made applicable to any property of VII, the provision set forth in such instrument shall control.

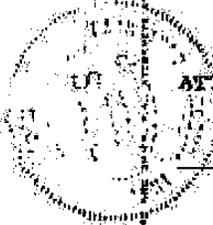
IN WITNESS WHEREOF, FHI has caused this instrument to be executed in its corporate name by its _____ President, attested by its Asst. Secretary, and its corporate seal to be hereto affixed, all by order of its Board of Directors first duly given, this the day and year first above written.

FAIRFIELD HARBOUR, INC. (SEAL)

By: George T. Donagan President

ATTEST:

Kathy M. Atkins Secretary



STATE OF Tennessee
COUNTY OF Knox

I, Judy L. Norwood, a Notary Public in and for said County and State, do hereby certify that on the 23 day of October, 1979, before me personally appeared George T. Donagan, with whom I am personally acquainted, who, being by me duly sworn, says that he is _____ President of FAIRFIELD HARBOUR, INC., the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said

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common seal; that the name of the corporation was subscribed thereto by the said _____ President; that the said President and Assistant Secretary subscribed their names thereto and the said common seal was affixed, all by order of the Board of Directors of said corporation; and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 13 day of October, 1979.

Judith L. Norris
Notary Public

My Commission expires:
My Commission Expires on August 18, 1984

STATE OF NORTH CAROLINA
COUNTY OF CRAVEN

The foregoing certificate of Judith L. Norris, a Notary Public of Craven County, North Carolina, is certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the office of the Register of Deeds of Craven County, North Carolina, in Book 131, Page 21.

This 21 day of December, 1979, at 2:00 o'clock P.M.

Thomas M. [Signature]
Register of Deeds

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FILED

ARTICLES OF AMENDMENT TO THE
RESTATED CHARTER OF FAIRFIELD HARBOUR
PROPERTY OWNERS ASSOCIATION, INC.

AUG 12 3 06 PM '83

THAD EURE
SECRETARY OF STATE
NORTH CAROLINA

The undersigned corporation hereby executes these Articles of Amendment for the purpose of amending its Restated Charter (hereinafter referred to as the "Charter"):

- 1. The name of the corporation is Fairfield Harbour Property Owners Association, Inc.
- 2. The following amendments to the Restated Charter of the corporation were adopted by the members of the corporation on the 19th day of June, 1983, in the manner prescribed by law:

A. Paragraph 5 of the Charter is hereby amended by deleting in its entirety the said paragraph 5 and inserting in lieu thereof the following:

"5. Directors of the Corporation shall be appointed or elected in the manner provided by the By-laws of the corporation."

B. Paragraph 7 of the Charter is hereby amended by deleting the said paragraph 7 in its entirety and inserting in lieu thereof the following:

"7. Ownership of a numbered residential lot or of a housing unit (including without limitation a condominium unit, timeshare unit, and a group or cluster housing unit) located in Craven County, North Carolina in the development known as Fairfield Harbour as the same may now or hereafter be shown on the maps and deeds thereof recorded from time to time (including without limitation the property shown on the maps of Treasure Cove Subdivision, that property identified in those deeds recorded in Book 901 at Page 504, Book 930 at Page 798 and Book 964 at Page 936 of the Craven County Registry and all that property contiguous to or in the general vicinity of the foregoing property) shall be a prerequisite to qualification for membership in the corporation, which membership shall be subject to the approval of the Board of Directors of the corporation pursuant to the provisions of the By-laws. There shall be one membership for each such numbered residential lot and for each



such housing unit regardless of the manner or number of names in which title to the same may be held. Any party or entity owning more than one such lot or unit, including Fairfield Harbour, Inc., shall be entitled to one membership for each lot or unit owned. A membership shall automatically terminate upon the change of ownership for any reason of the lot or unit to which such membership relates."

C. Paragraph 8 of the Charter is hereby amended by deleting in its entirety the said paragraph 8 and inserting in lieu thereof the following:

"8. Memberships in the corporation have no monetary value, any value or property rights of terminated or expelled members attributable to the corporation being contained solely in the value of the lot or unit owned by such member."

3. The date of the meeting of members at which the aforesaid amendments were adopted was June 19, 1983, at which meeting a quorum was present, and such amendments each received at least two-thirds (2/3) of the votes entitled to be cast by the members present at such meeting.

IN WITNESS WHEREOF, the corporation has duly caused this instrument to be executed in its corporate name by its President, attested by its Secretary and its seal to be affixed hereto, this the 27th day of June, 1983.

FAIRFIELD HARBOUR PROPERTY OWNERS
ASSOCIATION, INC.

BY: *Alvin J. Wilkins*
PRESIDENT

ATTEST:

Travis J. Neal
SECRETARY

NORTH CAROLINA

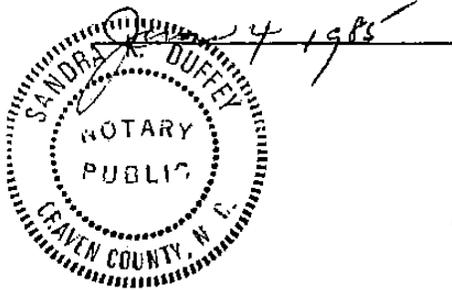
CRAVEN COUNTY

THIS IS TO CERTIFY that on this the 27th day of June, 1983,
 before me, a notary public, personally appeared Wibbiana
Nease, Jr. and Thomas T.
Nease, Jr., each of whom, being
 by me first duly sworn, declare that he signed the foregoing
 instrument in the capacity indicated, that he was authorized
 so to sign, and that the statements therein contained are
 true.

Witness my hand and official seal, this the 27th
 day of June, 1983.

Sandra K. Duffey
 NOTARY PUBLIC

MY COMMISSION EXPIRES:



DECLARATION OF UNIT OWNERSHIP

KNOW ALL MEN BY THESE PRESENTS:

That this Declaration is made on the date hereinafter set forth by Fairfield Harbour, Inc., hereinafter called the "Declarant" and/or the "Developer", a North Carolina corporation, pursuant to the provisions of Chapter 47A of the North Carolina General Statutes, as amended, entitled the "Unit Ownership Act",

W I T N E S S E T H :

WHEREAS, the Developer is the owner in fee simple of the property described on Exhibit A attached to this Declaration as Exhibit A and made a part hereof, sometimes hereinafter called "The Property"; and

WHEREAS, the Developer desires to subject The Property to the provisions of the North Carolina Unit Ownership Act and to publish a plan for the individual and/or interval ownership of Units therein; and

WHEREAS, the Developer also desires to subject The Property to each and every provision of that certain instrument captioned "Master Declaration of Fairfield Harbour" as recorded in Book 951, at page 55, in the office of the Register of Deeds of Craven County, hereinafter called the "Master Declaration"; and

WHEREAS, Fairfield Harbour Property Owners Association, Inc., a non-profit corporation organized under the laws of the State of North Carolina, hereinafter called the "P.O.A.", is the Property Owners Association which is charged with the management of the development known as "Fairfield Harbour", located in Craven County, North Carolina, and The Property is located within Fairfield Harbour, and the P.O.A. has agreed that the property is acceptable as an addition to Fairfield Harbour and joins in the execution of this Declaration to agree to the terms and conditions set forth herein, including the terms and conditions of the membership of Unit Owners and Unit Week Owners in the P.O.A.; and

See also the pg 975 for Declaration of Trust now on file

X18
44-L



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WHEREAS, Fairfield Harbourside Condominium Association, Inc., hereinafter called the "Association", has been organized as the operating entity of the condominium complex and joins in the execution of this Declaration to agree to the terms, conditions and responsibilities set forth herein.

NOW, THEREFORE, the Developer hereby submits The Property to the provisions of Chapter 47A of the North Carolina General Statutes, as amended, and further submits The Property to each and every provision of the Master Declaration, and hereby publishes its plan as to the division of The Property, the imposition of restrictive and protective covenants, conditions, restrictions, reservations, liens, agreements and charges thereon, and the individual ownership thereof, and hereby specifies that this Declaration shall constitute restrictive and protective covenants, conditions, restrictions and reservations which shall run with the Property and shall bind and inure to the benefit of the Developer, its successors and assigns, and all subsequent owners of any interest in The Property, their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

As used in this Declaration and bylaws and exhibits attached hereto, and all amendments thereof, unless the context otherwise requires, the following definitions shall prevail:

(a) The Act shall mean and refer to Chapter 47A of the North Carolina General Statutes, as amended. It is the intent of the Developer that the provisions of the Act shall control the creation of the Condominium Complex. Should there be any conflict between the Act and this Declaration, the Act shall control to the extent that the Act does not allow variances. In the event any clause contained herein is in violation of the Act, then said clause shall be severed from the remaining provisions hereof, and the remaining provisions hereof shall continue in full force and effect.

2

(b) Association shall mean Fairfield Harbourside Condominium Association, Inc., a North Carolina nonprofit corporation, which entity is responsible for the operation of the Condominium Complex.

(c) Association Properties shall mean such property as is owned by the Association from time to time in accordance with the terms of this Declaration.

(d) Board of Directors shall mean the Board of Directors of the Association which is responsible for administration of the Association.

(e) Building shall mean a structure or structures containing in the aggregate two or more units, comprising a part of the Condominium Complex.

(f) Bylaws shall mean the bylaws of the Association specified below, as they exist from time to time.

(g) Common Elements shall mean and include all of the property of the Condominium Complex (1.42 acres more or less as described on Exhibit A) with the exception of units as defined below, and shall include general Common Elements and limited Common Elements, if any.

(h) Common Surplus shall mean the excess of all receipts of the Association including, but not limited to, assessments, rents, profits and revenues on account of the Common Elements, over and above the amount of Common Expenses.

(i) Condominium and/or Condominium Complex shall mean the Property as described on Exhibit A and delineated on the plat attached hereto as a portion of Exhibit B.

(j) Condominium Unit or Unit shall mean that individual unit or apartment within the Condominium Complex as delineated on the plat and plans of the Condominium Complex attached to this Declaration as Exhibit H and made a part hereof. The physical boundaries of each Unit are delineated on the plans and are more particularly defined and set forth in Article XXIII herein. Each Unit consists of approximately 980 square feet of interior space, and the adjoining approximately 180

square feet of deck and/or balcony. The arrangement and location of all units and areas occupied by units described herein are shown on the aforesaid plat and plans.

(k) Developer shall mean Fairfield Harbour, Inc., its successors and assigns.

(l) Limited Common Elements shall mean and include those Common Elements, if any, which are reserved for the use of a certain unit or units to the exclusion of all other units.

(m) Maintenance Weeks shall mean two Unit Weeks which may be set aside for maintenance and restoration of a Unit each year.

(n) Management Agreement shall mean that certain agreement between the Association, acting by and through its Board of Directors, and any entity providing for the management of the properties within the Condominium Complex.

(o) Management Firm shall mean and refer to the entity identified as the Management Firm in the Management Agreement attached to this Declaration, its successors and assigns, or such other firm or entity as shall be responsible for the management of the Condominium Complex as provided in the Management Agreement attached to this Declaration or in such other Management Agreement or Management Agreements as may be entered into from time to time.

(p) Occupant shall mean any person or persons in possession of a Unit.

(q) Person shall mean an individual, firm, corporation, partnership, association, trust, any other legal entity, or any combination thereof.

(r) Purchaser shall mean any individual, person, corporation, partnership or other legal entity, including his or its heirs, assigns or successors, who purchases a Unit Week from the Developer either by cash payment or by an installment sales contract.

(s) Unit Owner or Owner shall mean any person or other legal entity owning one or more Units, including those Owners

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ARTICLE I
Definitions

The following terms as used in these Bylaws are defined as follows:

- A. "Association" means Fairfield Harbour Property Owners Association, Inc., a North Carolina non-profit corporation.
- B. "Board" or "Executive Board of Directors" means the body, regardless of name, designated in the declaration to act on behalf of the Association.
- C. "Bylaws" means the Bylaws of the Association.
- D. "Capital Expenditure" is an expenditure of funds for acquisition of property with a useful life of more than one year, with a purchase price of \$2,500.00 or more."
- E. "Community Manager" means either an individual employed directly by the Association or an individual employed by a Management Company with the approval of the Board, whose function will be defined in either the job description or management contract.
- F. "Declaration" means the duly recorded Declaration of Restrictions for all sections of Fairfield Harbour, as the same may be supplemented or amended from time to time.
- G. "Developer" means Treasure Lake of North Carolina, Inc. and its successors and assigns.
- H. "Development" means the Fairfield Harbour subdivision, as the same may be shown on the maps thereof recorded with the Craven County Register of Deeds from time to time.
- I. "Director" means a member of the Board elected by the Members at large or by the Board to fill a vacancy.
- J. "Electronic Board Meeting" means the use of electronic means to vote or attend Board meetings including, but not limited to, attendance by telephone conference call, Internet video conference or equivalent, as approved by the Board and allowed by the North Carolina Non-Profit Corporation Act (NCGS 55A).
- K. "FHPOA" means Fairfield Harbour Property Owners Association, otherwise

05/05/2020



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1

2 referred to as the "Association".

3 L. "Good Standing" means the Member's uniform annual assessment (Dues) is
4 paid in full or current, and the Member has no outstanding fees or fines.
5 Members who have made payment arrangements for dues, fees, or fines under
6 hardship exceptions, and are current on those payments, shall be considered
7 Members in Good Standing.

8 M. "Lot" means any enumerated physical portion of the planned community
9 designated for separate ownership or occupancy by a lot owner, included from
10 time to time in the recorded plats of the Development.

11 N. "Member" means current property owner(s), any person or legal entity,
12 including Developer, Association and Timeshare Owner, who holds recorded
13 legal title to any Lot or Unit in the Fairfield Harbour subdivision, Craven
14 County, North Carolina. There shall be only one (1) voting member per lot.

15 O. "Policies, Rules, and Regulations" means those rules, regulations, policies and
16 procedures that may from time to time be adopted by the Board as authorized
17 by North Carolina law, the Declaration, and/or the Articles of Incorporation,
18 and specifically including the Association's authority pursuant to the
19 Declaration to operate, maintain, repair, and improve all parks, roadways,
20 common areas and amenities owned, controlled, or operated by it, and to
21 promulgate and enforce policies, rules, and regulations for the use and
22 enjoyment of such properties.

23 P. "Timeshare Board" means the boards of directors of any owners association
24 for the Timeshare Units.

25 Q. "Timeshare Owner" means an Owner of an interest in a Unit committed to
26 interval or timesharing ownership.

27 R. "Unit" means any housing unit as defined in Paragraph 7 of the Articles of
28 Incorporation or the Declaration.

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ARTICLE II

31

Association Membership

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33 Section I. Class of Members.

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2 There shall be only one class of members and one membership for each Lot or each
3 Unit, regardless of the number of individuals or legal entities that hold recorded legal
4 title to said Lot or Unit. An Owner of a Lot or Unit shall, by reason of such ownership,
5 become a Member of the FHPOA.

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Section 2. Privileges.

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Generally, each Member in Good Standing shall be entitled to use Association property upon the terms and conditions established by the Board. With the exception of the Election of Directors, each Member from and after September 1, 1976, shall be eligible to vote on all questions presented to the Members at any meeting of the Association whether in-person or via mailed ballot prepared by the Association. However, there shall be only one vote for each Lot or Unit, regardless of the number of persons or legal entities who may be Owners of such Lot or Unit, and regardless of the form of such ownership or the manner in which title to said Lot or Unit is held.

17

18

Section 3. Suspension of Privileges of Membership.

19

20

The Board, by vote taken pursuant to Article V, Section 7 of these Bylaws, may suspend the membership privileges of any Member for the following:

21

22

A. For any period during which any Association charge or fee payable is unpaid by such Member.

23

24

25

B. During the period of any continuing or repeated violation of the DORs, Bylaws, Policies, Rules or Regulations of the Association by such Member or of the Member's spouse/partner, children, cohabitants, or tenants.

26

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Section 4. Reinstatement of Privileges of Member in Good Standing.

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Except as provided in Article II, Section 3, B, upon satisfaction of outstanding dues, fees and/or fines, and or the resolution of continuing violations, the status and privileges of membership will be reinstated to the Member by a vote of the Board.

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ARTICLE III

Record of Membership and Transfer

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2 Section 1. Member Records.

3 Adequate records shall be kept by the Association showing the names, addresses, and
4 such other contact information of the Members as is necessary for the Association to
5 conduct its business. The Member has an affirmative duty to notify the Association of
6 any changes in ownership, email, or mailing address.

7

8 Section 2. Transfer.

9 When a Member ceases to be an Owner, such person's membership and the privileges
10 existing through relationships to such person shall terminate immediately. However, the
11 Member shall remain liable for all Association charges incurred prior to the cessation
12 of ownership if not satisfied upon transfer of ownership.

13

14

ARTICLE IV

15

Official Meetings of Members16 Section 1. Place of Meeting.

17 Any official meeting of the Members shall be held in the State of North Carolina at
18 such place therein as shall be determined by the Board, in its sole discretion, and
19 stated in the call and notice of such meeting.

20

21 Section 2. The Annual Meeting

22 The Association shall hold an annual meeting of the Members in June of each
23 calendar year, on a day and at a time established by the Board, or at such other
24 times as shall be established and called by the Board. At the annual meeting, no
25 business shall be conducted except that which is stated on the agenda included with
26 the official notice of said meeting.

27

28 Section 3. Substitute Annual Meeting.

29 If the annual meeting shall not be held as designated by these Bylaws, a substitute
30 annual meeting shall be called by the Board in accordance with the provisions of

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2 Section 5 of this Article, at a date, time and location in North Carolina determined
3 by the Board. A meeting so called shall be treated for all purposes as the annual
4 meeting. At the Substitute Annual Meeting, no business shall be conducted except
5 that which is stated on the agenda included with the official notice of said meeting.

6

7 Section 4. Special Meetings of the Association.

8 Special meetings of the Members may be called only by the Board at any time in
9 the manner herein provided.

10 A. A special meeting of the Members may be called by the President or by a vote
11 of a majority of the Directors present at a duly called Board meeting.

12 B. A special meeting may also be called by the Board upon the written petition
13 requesting the call of such a meeting from Members representing at least ten
14 percent (10%) of the votes entitled to be cast on any matter or concern of the
15 Association. Such meeting shall be called within 30 days following delivery of
16 such signed and dated petitions to the Secretary of the Association. The petitions
17 shall set forth a proper and legal purpose for the special meeting to be held, and
18 such purpose must be a matter on which the Members are entitled to vote. The
19 date, time and location of the special meeting shall be set by the Board and not by
20 petitioners. Should a special meeting be called, no business shall be conducted
21 except that which is stated on the agenda included with the official notice of said
22 meeting.

23

24 Section 5. Notice of Meeting of the Association.

25 A. Notice of any meeting of the Association shall be given by the Secretary, or
26 other officer designated by the Board.

27 B. Written notice of the location, date and time of the meeting, and the purpose or
28 purposes for which the meeting is called, shall be delivered by the Secretary or
29 other officer designated by the Board not less than twenty (20) days nor more
30 than sixty (60) days before the date of the meeting, by mail, to each Member
31 entitled to vote at such meeting, provided, however, that with respect to each
32 member, by virtue of ownership of a Unit committed to interval or timesharing
33 ownership, such notice shall be so given to an officer of each Timeshare Board,
34 to the managing agent(s) of each Timeshare Association, or to such other
35 person as may be designated by each Timeshare Board (it being the

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2 responsibility of the board of directors of each Timeshare Association to give
3 such notice to its association members as it deems appropriate). If mailed, such
4 notice shall be deemed to have been delivered when deposited in the United
5 States mail, addressed to the Member at the address as it appears on the
6 records of each Association.

7

8 Section 6. Quorum.

9 A quorum at any meeting of the Members, or for voting by mail-in ballot without a
10 meeting, including a special meeting or annual meeting of the Association, shall be
11 seven percent (7%) of the Members entitled to vote at such meeting, in person, by
12 proxy or by mail-in ballot pursuant to Section 7 of this Article.

13 A. Notwithstanding anything to the contrary contained in the immediately
14 preceding sentence, the vote of each Member by virtue of ownership of a Unit
15 committed to interval or timesharing ownership shall be cast by the designee of
16 the Timeshare Board existing with respect to such Unit, voting in accordance
17 with the procedures set forth in Article IV, Sec 7.

18 B. With the exception of DOR amendments (67% affirmative) and the Election of
19 Directors of the FHPOA (plurality vote), any meeting of the Members of the
20 Association, at which a quorum is present, or any vote by mail-in ballot without a
21 meeting where a quorum has participated, the vote of a majority of those votes cast
22 shall be necessary for the adoption of any matter voted upon by the Members. The
23 Members present at a duly organized meeting, at which a quorum has been
24 established, may continue to do any and all business until adjournment,
25 notwithstanding the withdrawal of enough Members to leave less than a quorum.

26

27

28 Section 7. Voting.

29

30 The Board shall determine how Members will be allowed to vote, i.e., whether in
31 person, by proxy, by mail-in ballot or written ballot without meeting per N.C.G.S. 55A-
32 7-08, or designating in any manner any person, or any attorney-in-fact to vote or act for
33 any Member entitled to vote at any meeting of Members, except as expressly set forth
34 as follows:

35

36 A. Interval Unit/Timeshare Owners.

37

38 The vote on behalf of Members who, by virtue of ownership of an interest in a Unit
39 committed to interval or timesharing ownership, shall be cast only in accordance with

AMENDED & RESTATED BYLAWS
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1
2 the following procedures:

- 3
4 1. For elections of Directors for the Board of Directors of the Association, each
5 Interval Unit/Timeshare Board shall have the responsibility to designate an
6 interval owner for each Unit, who shall cast said Unit's vote solely by mail-in
7 ballot, even if the designee will be present for the meeting for which such mail-in
8 ballots are collected
9
- 10 a. At least sixty (60) days in advance of the annual meeting of the Association
11 at which directors shall be elected, the Interval Unit/Timeshare Boards shall
12 confirm in writing the designee for each Unit or Units, as the case may be, to
13 the Secretary of the Association. That designation shall be effective for one
14 year from the date of designation or until a new designation is made.
15
- 16 b. The Interval Unit/Timeshare Board shall provide each such designee
17 with written confirmation of his/her appointment and such other
18 information deemed required to define and emphasize the responsibility of
19 Unit representation.
20
- 21 c. The Association shall mail to each such designee its Notices of Annual
22 Meeting and information regarding candidates for Directors who shall have
23 been duly nominated. The Association will establish procedures from time
24 to time for balloting by mail by said designees and shall be responsible for
25 dissemination of pertinent information related thereto.
- 26 2. For matters other than the election of Directors for the Board of Directors of
27 the Association, each Interval Unit/Timeshare Board shall designate in
28 writing to the Secretary of the Association, a representative to cast the votes in
29 person, for all Units in such Interval Unit/Timeshare owner associations.
30 Such representative shall attend in-person the Association meeting at which
31 votes for such Interval Units/ Timeshares are to be cast in order to cast the
32 ballots. At any such meeting, such designee must possess written proof of
33 such designation

34 B. Members of the Association

35 Any FHPOA member (other than members entitled to vote by virtue of ownership of
36 an Interval Unit or Timeshare) shall be entitled to vote in person at a meeting of the
37 members of the FHPOA, however, a member may only vote by mail-in ballot for the
38 election of Directors for the FHPOA Board of Directors even if they will be present at
39 the meeting for which such mail-in ballots are being collected

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2 C. Determination of Good Standing

3 1. For the purposes of voting for the FHPOA Election of Directors, Good
4 Standing or eligibility shall be determined as of 4:30 p.m. on May 1 or, if
5 May 1 falls on a Saturday or Sunday, shall be determined as of 4:30 p.m. on
6 the first business day after May 1. The vote of a Member not in Good
7 Standing by that time shall not be eligible to be counted.

8 2. For purposes of voting for any item other than the election of Directors, Good
9 Standing or eligibility shall be determined as of a record date to be
10 established by the FHPOA Board for the subject vote.

11 D. Official Ballot

12 1. The ballot shall be executed on a form as may from time to time be approved
13 and prepared by the Association by resolution of the Board.

14 2. If ballots are used for a meeting then such ballots shall be valid only with
15 respect to the specific meeting for which it's designated, including
16 adjournments thereof, which meeting shall be designated in the ballot, and
17 such ballot shall be provided along with notice of such meeting in accordance
18 with these Bylaws.

19 3. If a vote is taken by mail-in ballot alone, without the holding of a meeting,
20 then the mail-in ballot shall be valid only for the matter(s) indicated in the
21 ballot. Such votes by mail-in ballot without a meeting shall be conducted
22 only as permitted by the Nonprofit Corporation Act or other applicable law in
23 North Carolina.

24 4. When holding a meeting, in which a vote is taken by mail-in ballot alone,
25 then the mail-in ballot shall be valid only for the matter(s) indicated in the
26 ballot. Such votes by mail-in ballot shall be conducted only as permitted by
27 the Nonprofit Corporation Act or other applicable law in North Carolina.

28 5. Deadlines for receipt of ballots, the manner for securing the ballots until
29 counted, and the procedure for counting the ballots shall be as established from
30 time-to-time by the FHPOA Board.

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AMENDED & RESTATED BYLAWS
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E. Election of Directors

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1. The election of Directors shall be solely by mail-in ballot. Mail-in ballots for the election of Directors shall specifically list those candidates (having been duly nominated) for whom the Member may vote.

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2. If the number of candidates for Director is equal to or less than the number of vacant positions, there shall not be a balloted election. The candidates will automatically be seated on the Board.

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3. The results will be announced at the Annual Meeting, and subsequently, published, indicating the number of valid ballots cast for each candidate.

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F. Acceptance of Vote

Association action based on the acceptance or rejection of a ballot, vote, consent, waiver, or proxy appointment, when done under the provisions of the Nonprofit Corporation Act in North Carolina, is valid unless a court of competent jurisdiction determines otherwise.

ARTICLE V

Powers

22

Section I. Powers

23

24

The Board shall exercise the enumerated powers in NCGS 47F & 55A, while recognizing and including the following:

25

A. Manage and control the affairs of the Association.

26

B. Adopt a corporate seal as the seal of the Corporation.

27

28

29

C. Designate a banking institution or institutions as depository for the Association's funds; and the officer or officers authorized to make withdrawals therefrom and to execute obligations on behalf of the Association.

30

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D. Acquire and accept title to any and all amenities within the Development, including but not limited to the roads, parks and recreational facilities.

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34

E. Establish and levy reasonable fees for the issuance of permits for erecting or placing improvements on any Lot and for the use of Association property.

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2 F. Cause the Association, to employ or contract for sufficient personnel to
3 adequately perform the responsibilities of the Association.
- 4 G. Adopt reasonable rules of order for the conduct of the meetings of the Association.
5 For questions upon which no rules have been adopted, the ruling of the Chairperson
6 of the meeting shall be final.
- 7 H. Elect the officers of the Association.
- 8 I. Establish committees of the Association and appoint the members thereof. It may
9 assign to such committees such responsibilities and duties not inconsistent with
10 the provisions of these Bylaws or with law as it may deem appropriate. All voting
11 committee members must be members of the Association.
- 12 J. Establish Policies, Procedures, Rules and Regulations for the management of the
13 Association.
- 14 K. Financial Duties and Responsibilities
- 15 1. Establish and adopt a budget for the Association each fiscal year, to include a
16 five-year plan for capital expenditures. The Association's operating budget shall
17 not rely on the depletion or under-funding of reserves without the affirmative vote
18 of five (5) of the seven (7) Directors.
- 19 2. Establish and levy a uniform annual assessment for each Lot and Unit for the
20 following fiscal year. Each Member shall be advised, in writing, of the amount and
21 due date of such uniform annual assessment.
- 22 3. Make the budget available to the membership by the third Wednesday in January
23 of each year prior to its final approval by the Board in February.
- 24 4. Provide a copy of the proposed annual budget and capital expenditures plan to
25 members upon request.
- 26 5. Plan for Unforeseen Events
- 27 a. In an emergency caused by natural or man-made disasters (such as hurricanes,
28 floods, fire, tornadoes, etc.), acts of terrorism, war, riot, or other catastrophic
29 event beyond the control of the Association, the Board may, without Member
30 approval, and consistent with NCGS 55A-3-03 and for the benefit of the entire
31 community, make available emergency funds not stipulated in the budget for
32 that fiscal year. During an emergency, if a full Board cannot be assembled,
33 this action requires the affirmative vote of a quorum of Directors.
- 34 b. During any fiscal year, excluding approved Capital Expenditures set
35 forth in the fiscal year budget, the Board, with the affirmative vote of five
36 (5) of the seven (7) Directors, may authorize additional Capital

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2 Expenditures not to exceed fifteen percent (15%) of the projected
3 revenues for that fiscal year. Additional Capital Expenditures exceeding
4 the fifteen percent (15%) limit herein shall require approval by the
5 Members at a special meeting called by the Board.

6

6. Provide Audits

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8 a. The cash accounts of the Association shall be audited in the event of a
9 change in personnel holding the positions of Treasurer, Community
10 Manager, or accounting manager.

11

12 b. The Board shall cause the financial records of the Association to be audited no
13 less than once every five years.

14

7. Establish Reserves

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16 The replacement reserves shall be reviewed no less than every five years by a
17 professional Reserve Analyst.

18

8. Provide Compensation

19

20 a. Fix reasonable compensation for employees and officers of the Association.

21

22 b. Director is a volunteer position and shall not be a paid employee of the
23 Association.

24

25 9. Provide for reimbursement to Directors for actual expenses incurred in service as
26 Director; provided however that such reimbursement shall be made or paid only
27 to the extent that it does not jeopardize any tax exemption of the Association
28 provided by the Internal Revenue Code and the regulations issued thereunder, as
29 the same may be from time to time amended.

30

31 L. Perform any and all other acts for which the authority has been granted herein, or under
32 NCGS 47F and/or 55A, by the Association's Articles of Incorporation, by the
33 Declaration, or by law.

34

Section 2. Number of Directors.

35

36 The number of Directors shall be seven (7).

37

Section 3. Election, Term and Appointment of Directors.

38

39 A. Directors shall be elected by a plurality vote of the Members, at the annual meeting

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2 or substitute annual meeting of the Association, by the highest number of valid
3 votes in the following manner. Commencing in 2005 and every third year thereafter
4 three (3) Directors will be elected. During each of the other two years of this three-
5 year cycle, the members will elect two (2) Directors. All Directors elected by the
6 Members shall serve three (3) year terms. Once elected, the names of the Directors
7 and their addresses shall be published within thirty (30) days.

8 B. No Member in Good Standing and meeting the qualifications in Section 4 of this
9 Article shall be denied having his/her name placed on the ballot for election of
10 Directors if nominated pursuant to the procedures established herein. Nominations
11 for any Director position to be voted upon by the Members may be made to the
12 Association Secretary, via the approved Association nomination form, in either of
13 the following manners, no less than sixty (60) days prior to the next succeeding
14 annual meeting of the Members, or at such other time as the Board of Directors
15 may direct.

16 1. Any Member in Good Standing may submit his or her own name as a
17 candidate through the use of the Association approved nomination form.

18 2. Any Member in Good Standing may nominate another Member in Good
19 Standing as a candidate through the use of the Association's approved
20 nomination form. The Board shall inform each Member so nominated, of the
21 nomination, in writing. The nominee's name will be placed on the ballot
22 unless the nominee declines the nomination, in writing, submitted to the
23 Board, at the Association office, no later than one (1) week after the close of
24 nominations.

25 3. To be placed on a ballot as a candidate for Director, the Member must be in
26 Good Standing as of May 1st or on the date set for the close of nominations
27 for the year in which the nomination was made.

28 C. No person shall serve as a Director for more than two (2) successive elected terms,
29 it being understood that the unexpired term served by any Director pursuant to
30 Section 8 of this Article shall not be counted with respect to this limitation.

31 D. The Board shall, to the extent not set forth herein, establish the procedural details
32 for the conduct of the election of Directors.

33

34 Section 4. Qualifications of Directors

35 Directors shall be at least twenty-one (21) years of age but need not be residents of the

AMENDED & RESTATED BYLAWS
of the
FAIRFIELD HARBOUR PROPERTY OWNERS ASSOCIATION, INC.

1

2 State of North Carolina. Directors elected pursuant to Article V, Section 3, Paragraph A
3 or Article V, Section 8 hereof shall be Members in Good Standing as of the date set for
4 close of nominations and shall remain in Good Standing at all times through the election
5 and, if elected, during their service as Director.

6

7 Section 5. Meetings of the Board of Directors

- 8 A. The Board shall meet no less than one time every quarter. After adoption of a
9 resolution setting forth the dates and times of regular meetings, no notice of such
10 meetings of the Board shall be given.
- 11 B. Special meetings, including Electronic Meetings, of the Board may be called by a
12 majority of the Board and shall be held at such location, date and time, as the call or
13 notice of meeting shall designate. Notice of a special meeting of the Board may be
14 given by the Secretary in writing or orally at least twenty-four (24) hours prior to
15 the time of said meeting or notice thereof may be waived by the Directors in writing.
- 16 C. Pursuant to NCGS 47F-3-108(b) the Board shall, at regular intervals, hold a Board
17 meeting, wherein Members shall be allowed to attend and to speak to the Board
18 about their issues or concerns ("community meetings"). During such community
19 meetings the Board may place reasonable restrictions on the number of persons who
20 speak on each side of an issue and may place reasonable time restrictions on
21 Owners who speak.
22
- 23 D. Executive sessions are portions of Board meetings when confidential matters are
24 discussed. In accordance with the current Robert's Rules of Order Newly Revised, the
25 Board may go into executive session when discussing issues that if publicly discussed
26 could violate privacy laws or harm or cause embarrassment to the Association or
27 another party. Adoption of actions taken in executive session will be recorded in the
28 regular session minutes. Topics that may be discussed in executive session include the
29 following:
30
- 31 1. Consulting with the Association counsel regarding legal issues;
 - 32
 - 33 2. Discussing litigation or prospective litigation either by the Association or
34 against the Association;
35
 - 36
 - 37

AMENDED & RESTATED BYLAWS
of the
FAIRFIELD HARBOUR PROPERTY OWNERS ASSOCIATION, INC.

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- 3. Reviewing personal information that is confidential, protected by law, or should not be generally known, such as delinquencies in homeowner association dues assessments;
- 4. Conferring about contracts or property purchases;
- 5. Reviewing Association employees or personnel issues; and/or
- 6. Reviewing disciplinary matters in violations of Policies and Regulations by Association Members.

Section 6. Action Without Meeting

Pursuant to the North Carolina Non-Profit Corporations act, NCGS 55A-8-21, any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if the action is taken by all members of the Board. The action shall be evidenced by one or more written consents signed by all Directors before or after such action, describing the action taken, and included in the minutes or filed with the corporate records reflecting the action taken. To the extent that the corporation has agreed pursuant to GS 55A-1-70, a director’s consent to action taken without a meeting may be in electronic form and delivered by electronic means.

- A. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different date.
- B. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Section 7. Quorum.

A majority of the Directors shall constitute a quorum to transact business of the Board, and the act of the majority of the Directors present at any meeting where a quorum is present shall be deemed to be the act of the Board, except where a larger vote shall be required by law, by these Bylaws or by the Articles of Incorporation or Declaration.

Section 8. Vacancies.

If any vacancy exists on the Board, such vacancy shall be filled by election and majority

AMENDED & RESTATED BYLAWS
of the
FAIRFIELD HARBOUR PROPERTY OWNERS ASSOCIATION, INC.

1
2 vote of the remaining Directors. Any Director elected by such vote shall serve the
3 unexpired term of the Director whom he or she replaced.

4

5 Section 9. Removal of Directors.

6 A. Pursuant to NCGS 55A-8-08 and Article IV, Section 4(B) of these Bylaws,
7 Directors may be removed from office with or without cause at a special meeting of
8 the Members of the Association called specifically for such purpose.

9 B. A Director not in Good Standing is immediately ineligible to vote on all matters
10 brought before the Board. If a Director reestablishes Good Standing, that Director
11 is immediately eligible to vote.

12

13 ARTICLE VI

14 The Officers

15 Section 1. Officers.

16 The officers of the Association shall be elected by the Board and shall be the President,
17 one or more Vice-Presidents, the Secretary, the Treasurer and such other officers and
18 assistant officers as the Board may from time to time elect. Officers shall serve at the
19 will of the Board and may be removed and replaced by the Board at any time, with or
20 without cause. Any two (2) or more offices may be held by the same person, except the
21 offices of President and Secretary. Officers must be Members in Good Standing.

22

23 Section 2. President.

24 The President shall be the general managerial officer of the Association, except as
25 otherwise determined by the Board, and shall be vested with the powers and
26 duties generally incident to the office of President of a non-profit corporation,
27 except as otherwise determined by the Board, or as may otherwise be set forth in
28 these Bylaws. The President shall, when present, preside at all meetings of
29 Members. No one person has authority to bind the corporation without a Board
30 vote recorded in the minutes that authorizes entry into a contract. The President
31 shall sign, with any other proper officer, certificates, any deeds, leases, mortgages,
32 bonds, contracts or other instruments which may be lawfully executed on behalf

AMENDED & RESTATED BYLAWS
of the
FAIRFIELD HARBOUR PROPERTY OWNERS ASSOCIATION, INC.

1
2 of the Association, not to exceed \$5K per vendor for a term of no more than one
3 year, except where required or permitted by law to be otherwise signed and
4 executed and except where the signing and execution thereof shall be delegated
5 by the Board of Directors to some other officer or agent, and, in general, shall
6 perform all duties incident to the office of President and such other duties as may
7 be prescribed by the Board of Directors from time to time.

8

9 Section 3. Vice-President.

10 In the absence of the President, or the President's inability or refusal to act, the
11 Vice-President is empowered to act and shall thereupon be vested with the powers
12 and duties of the President. In the event there is more than one Vice- President,
13 the Board shall establish the order in which they shall so serve.

14

15 Section 4. Secretary.

16 The Secretary of the Association shall keep the minutes of the business and other
17 matters transacted at the meetings of the Directors. The Secretary shall mail, or
18 cause to be mailed, all notices required under the Bylaws and NC State statutes.
19 The Secretary shall have the custody of the corporate seal and records and
20 maintain a list of the Members and their addresses and perform all other duties
21 incident to the office of Secretary. The Secretary does not have to be a Director but
22 must be a Member in Good Standing.
23

24 Section 5. Treasurer.

25 The Treasurer shall have custody of the funds of the Association, collect monies
26 due, pay the obligations of the Association out of its funds, and perform such
27 other duties as are incident to the office of Treasurer. The Treasurer shall not
28 incur financial obligations on behalf of the corporation without Board approval.
29 The Board may require that the Treasurer be bonded for such amount and under
30 such conditions as the Board may require. The Treasurer does not have to be a
31 Director but must be a Member in Good Standing.

32

33 Section 6. Responsibility While Holding Office
34

AMENDED & RESTATED BYLAWS
of the
FAIRFIELD HARBOUR PROPERTY OWNERS ASSOCIATION, INC.

- 1
2 A. In accordance with NCGS 55A, Directors and Officers shall act in good faith,
3
4 with prudent care, and the best interests of the Association. The Directors and
5 Officers shall remain actively involved in the affairs of the Association and
6 will attend Board meetings on a regular basis.
7
8 B. If any Officer or Director is notified through judicial or administrative process
9 to provide Association documents or any contents thereof, the Officer or
10 Director shall promptly notify the Board and its Council.
11
- 12 Section 7. Responsibility Upon Leaving Office
- 13 A. All documents shall be and remain the property of the FHPOA upon the
14 conclusion of any Director's or Officer's term of office.
- 15 B. Former Directors and Officers shall exercise all reasonable efforts to protect
16 documents, whether hardcopy or electronic, in their possession related to their
17 terms of office for a period of three years.

18
19
20 style="text-align:center">ARTICLE VII
Duties of Members & Owners

- 21 Section 1. Payment of Charges and Assessments
- 22 A. Time of Payment. The charges of annual uniform assessments, **except for**
23 fees for usage, and charges for services or goods received by Members or
24 Owners through the facilities of the Association, shall be paid to the
25 Association by May 1st of each year or when otherwise due.
- 26 B. Lien of Assessment. If any uniform annual assessment or levied assessment is
27 not paid when due, it shall bear delinquency charges established by the Board
28 in accordance with NCGS 47F. The Association may place a lien on any Lot
29 or Unit or take any such other action prescribed in accordance with NCGS
30 47F to collect any unpaid, delinquency, charge, or assessment. Every person
31 who shall become the Owner of any Lot or Unit shall be held conclusively to
32 have covenanted to pay all such charges or assessments. In addition, and as an
33 alternative to the remedy of lien foreclosure, the Association Shall have the
34 right and option to sue for any and all unpaid charges, interest costs and
35 reasonable attorney's fees in any Court of competent jurisdiction as for debt
36 owed by any delinquent member.
- 37 C. Proof of Payment. Upon request, the Association shall furnish a statement to

AMENDED & RESTATED BYLAWS
of the
FAIRFIELD HARBOUR PROPERTY OWNERS ASSOCIATION, INC.

1
2 any Member or Owner certifying that all assessments then due from such
3 Member have been paid or indicating the amount then due.

4

5 Section 2. Further Duties of Members or Owners

6 Each Member or Owner shall comply with all Policies, Rules, and Regulations of the
7 Association including, but not restricted to, those for use of specific Association
8 property. Each Member or Owner shall cause spouses, children, cohabitants,
9 roommates, and tenants to comply with all Policies, Rules, and Regulations of the
10 Association. Violations of Policies, Rules, and Regulations of the Association by any
11 spouse, child, cohabitant, roommate, and tenant shall be deemed a violation by the
12 Member or Owner.

13

14 Section 3. Exceptions

15 No sanctions for non-payments of assessments or charges shall ever be imposed
16 upon the Developer, the Association itself, or any corporation that may be created to
17 acquire title to or operate any water or sewer utilities serving the area, or any dams,
18 beaches, water access tracts, marinas, golf courses, tennis courts, swimming pools,
19 clubhouse grounds, camp grounds, or other like recreational facilities, regardless of
20 whether such facilities are used by persons other than Members and Owners. The
21 Developer and such other person and corporations as aforesaid shall be exempt from
22 payment of annual charges or assessments to the Association.

23

24 Section 4. Sanctions

25 The Board of Directors of the Association shall have the right to suspend the
26 privilege of use of the recreational facilities of the Association.

27 A. For any period during which any Association charge of any kind whatsoever
28 owed by the member remains unpaid.

29 B. During any period of continuing violation of the restrictive covenants of the
30 Subdivision by the member, after the existence of the violation shall have
31 been declared by the Board.

32

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AMENDED & RESTATED BYLAWS
of the
FAIRFIELD HARBOUR PROPERTY OWNERS ASSOCIATION, INC.

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ARTICLE VIII

Indemnification

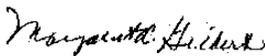
The Association shall indemnify and maintain liability insurance for its Officers, Directors, employees and agents consistent with provisions of the North Carolina Planned Community Act (NCGS 47F) and as authorized in the North Carolina Non-Profit Corporation Act (NCGS 55A-8-56). Association members of committees authorized by the Board shall be considered agents of the Association solely for the purpose of indemnification.

Article IX

Amending and Modifying These Bylaws

These Bylaws may be amended by the affirmative vote of five (5) of the seven (7) Directors of the Board.

The foregoing is certified to be a true and correct copy of the Bylaws of the Association; adopted this the 5th day of May 2020



Margaret Gilbert
Secretary - Fairfield Harbour POA Board of Directors

Change History

This document replaces the FHPOA Bylaws issued on 07-28-2004 and supersedes any and all prior versions.



Property Owners Association, Inc.
902 Coral Reef Dr., New Bern, NC 28560

Office: 252.633.5500 Fax: 252.635.2154
Email: fhpoa@fhpoa.org

Executive Session: The Board may go into Executive Session at any time during the meeting as necessary for one or more of the following reasons: consulting with the association counsel regarding legal issues, discussing litigation or prospective litigation either by the association or against the association, reviewing personal information that is confidential or should not generally known, such as delinquencies in homeowner association dues, conferring about contracts, reviewing association employees or personnel issues, handling disciplinary matters or rules violations by association members.

FAIRFIELD HARBOUR BOARD OF DIRECTORS AND OFFICERS

June 28, 2024 1 PM

Limited Executive Session

AGENDA

Call to Order
Election of Officers for 2024–25
Governance Q&A with General Counsel
Items for discussion and action:
 Approval of construction loan from Truist bank;
 Engagement of General Contractor for construction of Harbour Club
Adjournment

MEMBERS PRESENT: Directors Albertini, Barajas, Broody, McLamb, Moore, Pendleton, Pfefferkorn. Treasurers Heydel and Miller; Community Manager Gudaitis, Secretary Miller.

GUESTS: Bill Drechsler, John Rothengast, Steve Steinbeck, Susanne Pendleton
Attorney Carmichael joined the meeting via zoom from Raleigh.

The meeting was called to order at 1:06 pm. by Secretary Miller.

The first order of business was to elect new officers for the 2024-2025 term.
Director McLamb made a motion to elect Director Carolyn Gayle Albertini to the position of president. Second was entered by Director Broody. Approved: Directors: Albertini, Barajas,



Broody, McLamb, Moore, Pendleton and Pfefferkorn. Opposed: None. Motion passed unanimously.

President Albertini made a motion to elect Director David F. Pfefferkorn to the position of vice president. Director McLamb made a second. Approved: President Albertini Directors: Barajas, Broody, McLamb, Moore, Pendleton and Pfefferkorn. Opposed: None. Motion passed unanimously.

Attorney Carmichael gave a short presentation on what fiduciary duty is and the responsibility of Board members.

Each Director was given a copy of the Code of Ethics to sign for the 2024-25 session.

Director Pendleton asked if it would be possible to amend the Bylaws so that a petition for removal of Board members would have to have a cause and a supermajority. Director Pendleton made a motion to add a Bylaw change to the end of the agenda. Second by VP Pfefferkorn. Approved: President Albertini; VP Pfefferkorn; Directors Broody, McLamb and Pendleton. Opposed: Directors Barajas and Moore. Motion passed by a majority vote.

The members of the Harbour Club Committee joined the meeting at 1:40 pm. Each committee member introduced themselves and stated what their background is in relationship to committee needs.

Committee Chair Bill Drechsler discussed twenty items that led to the current status of the Harbour Club development.

Director McLamb asked if we don't vote on this club, how much money will we lose? The answer was between \$340K – \$350K along with a lot of labor by people over six years.

Treasurer Miller said that people want to keep the POA offices where they are rather than across the street. How would that affect this plan? Answer: Not good news. The architect has 93 pages of drawings that would have to be redesigned for erosion, sanitation, plumbing, electric, HVAC, etc. That would set us back 4-6 weeks. Then it would have to be sent out for bids again. The architect cost would be an additional \$100K to review the drawings plus more for each contract. April 24th was the end of the construction contract, but was extended due to the voting taking place in FH. The architect wants a contract by the end of this week. If not, 3 months down the road he can't guarantee costs won't go up. Subs are lined up to go. We will pay more for less.

Mr. Rothengast said prices came in under what we projected. We can go up to \$6.5M. The General Contractor (GC) is at \$6.2M, contingencies are \$325K (5%). There is a cost allowance to cover kitchen counters, tables, chairs, etc.

A question was raised as to what materials will be used for the Harbour Club. We are foregoing a metal roof due to the cost so we will be using 30-year shingles; a metal roof will be used on

the overhang; hardy board will be used for the remainder along with stonework at the base of the building.

Attorney Carmichael questioned whether the POA has budgeted for extra personnel for the new building if the offices are not moved. The insurance company will want people there in case of fire, broken pipes, and security.

Director Moore said the offices are centrally located and people in the community don't want them to move.

Treasurer Miller welcomed Directors Barajas and Moore to the Board. He stated that over their 3-year term there will be conflicts of interest and there will be differences of opinion, but you will still be working with the same people and we try to be civil. If you are here to profile FHSTOP, you are in the wrong place. If you are in support of the Board, you will follow NC 47F and 55A POA Bylaws and Policies. FH has been in existence for a long time and many people have put a lot of work into making this place successful. There is a cost of 5-8K\$ in expenses for each vote you want. FHSTOP is trying to run this place by Facebook and it has created a monster. You are not our enemy and we will treat you as such.

Director Barajas responded that he and Director Moore are independent of FHSTOP and represent the people who voted us in.

As Treasurer, I went through 15 budget cycles for the HC. For the Preliminary Budget in January 2024, the HC Budget was \$7M at 7.25% starting in March 2025. It was only a place holder for the future. As Treasurer, I talked to 3 banks who we wanted to finance the construction of the HC. Two were traditional banks with no special rate. Truist was selected because they have an HOA/POA program.

Treasurer Miller provided Truist with budget and financial records. The Truist credit department has issued a commitment letter dated June 26, 2024. The Truist Loan is at 6.6% and has an interest only option for one (1) year and then it goes to a 14-year P & I loan. The loan to Coastal Bank for \$908K will be paid off early with no dues money being used. There is a \$9K penalty for paying off the loan early, but the POA will still save \$50K by paying it off early from eliminated interest expenses.

Director Pendleton asked newly appointed Assistant Treasurer Miller about future dues increases related to the HC. He replied that no raise in POA Dues for the HC is necessary.

A recess was taken to allow the new Directors to read the Code of Ethics before signing them.

The Board entered Executive Session at 3:45 pm.
The Board exited Executive Session at 4:15 pm.

The Harbour Club Committee re-entered the Board room.

After an extensive discussion in Executive Session, it was decided to sign the commitment letter with Truist Bank.

VP Pfefferkorn made a motion to proceed with the Harbour Club construction as presented by the committee today and to fund that construction by securing funds from Truist Bank and authorize the President to sign all papers subject to the approval of legal counsel. Second by Director Pendleton.

Approved: President Albertini; VP Pfefferkorn; Directors Broody, McLamb, Pendleton.

Opposed: Directors Barajas, Moore. Motion passed by majority vote.

HCC Chair Bill Drechsler described the HC contractor. It is Wimco Corporation in Washington, NC. It is a 3rd generation corporation with a lot of commercial expertise. There will be a superintendent on site all the time who will provide daily progress updates by camera.

VP Pfefferkorn made a motion to award a construction contract to Wimco Corporation as presented by the Harbour Club Committee and to authorize the FHPOA Board President to sign a contract subject to the approval of the bank and POA legal counsel in the amount of \$6,157,749. Director Pendleton made a second. Approved: President Albertini; VP Pfefferkorn; Directors Broody, McLamb, Pendleton. Opposed: Directors Barajas, Moore. Motion passed by majority vote.

Director Pendleton thanked the HCC for all of their work over six years to make the HC happen. The Board will send out a special notice to the community announcing this vote. The HCC left the Board Room.

The Board entered Executive Session at 4:40 pm.

The Board exited Executive Session at 4:47 pm.

Director Pendleton made a motion to retain Rhonda Miller as Secretary. Director Broody made a second. Approved: Directors: Albertini, Barajas, Broody, McLamb, Moore, Pendleton and Pfefferkorn. Opposed: None. Motion passed unanimously.

President Albertini made a motion to have Kevin W. Heydel continue as Treasurer. Director Broody made a second. Approved: Directors: Albertini, Barajas, Broody, McLamb, Moore, Pendleton and Pfefferkorn. Opposed: None. Motion passed unanimously.

Director Moore made a motion to have Rich Miller continue on the Board as Assistant Treasurer. VP Pfefferkorn made a second. Approved: President Albertini; VP Pfefferkorn; Directors Barajas, Broody, McLamb, Moore Pendleton. Opposed: None Motion passed.

The Board entered Executive Session at 4:47 pm.

The Board exited Executive Session at 5:01 pm.

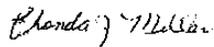
Director Pendleton made a motion to amend the Bylaws stating that any vote for removal of any member of the FHPOA Board, including current members, will require 67% of POA members who are eligible to vote according to the POA Bylaws in effect at the time of said recall ballot is distributed for voting. President Albertini made a second. Approved: President Albertini; VP Pfefferkorn; Directors Broody, McLamb and Pendleton. Opposed: Directors Barajas and Moore. Motion approved by majority vote. (See FHPOA Bylaws Article V; Section 9; Paragraph A.)

Attorney Carmichael will send Secretary Miller the exact wording needed for the amendment.

Director Broody made a motion to adjourn. Director McLamb seconded the motion. Approved: President Albertini; VP Pfefferkorn; Directors Barajas, Broody, McLamb, Moore, Pendleton. Opposed: None. Motion passed.

The meeting adjourned at 5:03 pm.

Respectfully submitted,



Rhonda J. Miller, Secretary
FHPOA



Property Owners Association, Inc.
 902 Coral Reef Dr., New Bern, NC 28560

Office: 252.633.550 Fax: 252.633.2154
 Email: fhpoa@fhpoa.org

**RESOLUTION 2024-03
 OF THE BOARD OF DIRECTORS
 FAIRFIELD HARBOUR PROPERTY OWNERS ASSOCIATION, INC.
 A RESOLUTION TO AMEND THE BYLAWS OF
 FAIRFIELD HARBOUR PROPERTY OWNERS ASSOCIATION, INC.**

WHEREAS, Article IX of the Bylaws of Fairfield Harbour Property Owners Association, Inc. ("FHPOA") provides that the Bylaws may be amended by the affirmative vote of five (5) of the seven (7) Directors of the Board; and

WHEREAS, at a duly called meeting of the Board of Directors of FHPOA on June 28, 2024, motion was made, seconded and approved by five(5) of the seven (7) Directors of FHPOA to amend the corporation's bylaws as provided hereinbelow,

THEREFORE, In consideration and compliance of the above, the FHPOA Board of Directors wishes to amend Article V, Section 9 of the Bylaws of FHPOA by removing that section in its entirety and inserting in lieu thereof the following:

"Section 9. Removal of Directors.

- A. A vote for removal of a Director may be called by the Board Directors or by petition of the Members for special meeting as otherwise provided in these Bylaws. Provided, however, that the vote required for removal of a sitting Director who has been duly elected or appointed pursuant to these Bylaws shall be not less than sixty-seven percent (67%) of the eligible vote of the POA Membership.
- B. A Director not in Good Standing is immediately ineligible to vote on all matters brought before the Board. If a Director reestablishes Good Standing, that Director is immediately eligible to vote."

RESOLVE, That RESOLUTION 2023-04 was ADOPTED on June 28, 2024 by a majority of five of seven directors of FHPOA, with two of the seven directors voting against the amendment, all as shown in the minutes of said Board meeting.

President's and Vice-President's Certification: The undersigned, respectively being the President and Vice-President of the Fairfield Harbour Property Owners Association, a North Carolina nonprofit



corporation, certify that the foregoing Resolution 2023-04 was approved and adopted by a majority of five members of the Board of Directors of the Association, at a duly called and held meeting of the Board of Directors of the Association on June 28, 2024 and In witness thereof, the undersigned have subscribed their names.

Fairfield Harbour Property Owners Association, a North Carolina nonprofit corporation



Gayle Albertini, President



David Pfefferkorn, Vice-President (In the absence of the Secretary)



This memo is to outline the procedures performed by Earney Accountants and Advisors pertaining to the ballot initiative to remove 4 members of the board of directors of Fairfield Harbour POA.

Earney Company received 22 paper ballots mailed to 710 Military Cutoff Rd Wilmington, NC before the EOD 9/23/24. The ballots were maintained by Eric Bregman, CPA Assurance Partner. Due to the limited number of ballots, no additional staff was required. Of the 22 Ballots, 21 were validated with 1 being a delinquent lot which is invalidated. So 21 valid ballots were counted. Of the 21, 15 were "FOR REMOVAL" and 6 were "AGAINST REMOVAL"

All ballots were properly signed by the lot owner, their lot number properly identified, and their vote selection was clear and concise. All ballots were returned to Fairfield Harbor after counting.

The electronic ballots were handled via VOTE HOA NOW. Earney Accountants and Advisors was not involved with the VOTE HOA NOW process, however the total count was received by us on 9/25/24. The total tally from Vote HOA Now is as follows:

Against removal - 706

For Removal - 766

The result is as follows for both paper and electronic voting

Against removal - 712 (47.69%)

For removal - 781 (52.31%)

Total Ballots - 2771

Total Ballots received - 1493 (1472 electronic and 21 paper)

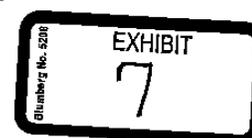
Percent of ballots received - 53.8%

Due to the threshold of 67% not being met the petition **DOES NOT PASS**.

Eric Bregman, CPA

Earney & Company, PLLC

Earney & Company, PLLC, 710 Military Cutoff Road, Suite 250 Wilmington, NC 28405
T: (910) 256 9925, F: (910) 256 2829, www.earney.com





Hope Derby Carmichael, Partner
hcarmichael@jordanprice.com
Fax: 919-831-4484

October 18, 2024

Wesley A. Collins
Harvell and Collins, P.A.
1107 Bridges Street
Morehead City, North Carolina 28557

Re: Fairfield Harbour Property Owners Association, Inc.

Dear Wes:

I write in response to your correspondence of October 9, 2024, which was sent on behalf of a group of unnamed property owners within Fairfield Harbour, purportedly as a demand pursuant to N.C. Gen. Stat. § 55A-7-40. The Association will not be taking the action demanded for the reasons set forth below.

I. Derivative Demand

I will again point out that after numerous communications, you have still failed to identify any client whom you are representing. While you have stated that the purpose of your October 9 correspondence was to give notice under G.S. § 55A-7-40, we do not consider a demand made by unnamed persons to be proper. You have not identified any individual with standing to make a demand and ultimately to initiate any derivative lawsuit.

In addition, we are aware that at least one current director has contributed to fund your legal fees. For obvious reasons, this creates a direct conflict of interest with any such directors being privy to any legal discussion regarding your threatened lawsuit, not to mention attorney-client privilege concerns. Indeed, the failure of such individuals to disclose their involvement with you or your owner group, whether that involvement is formal or informal, is a breach of their own fiduciary duties and confidentiality obligations to the Association. These circumstances present unique challenges for the current Board of Directors to engage appropriately with me as their general counsel while discharging all of our fiduciary duties (mine and the individual directors') to act in the best interests of the corporation.

II. Response to Demand

While the Board does not consider your notice pursuant to G.S. § 55A-7-40 to be valid, nor would this appear to be an actual derivative claim, I have nonetheless responded in the hopes that unfounded litigation can be avoided. Your specific demand is that the Board acknowledge that the recent vote to remove four directors passed, an outcome that is contrary to the voting results.



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On June 28, 2024, a supermajority of the members of the Board of Directors voted to amend the Bylaws of the Association to require that removal of a director be approved by not less than sixty-seven percent (67%) of the eligible vote of the Association's membership. This amendment was in accordance with Article IX of the Bylaws which states: "These Bylaws may be amended by the affirmative vote of five (5) of the seven (7) Directors of the Board." You have taken the position that this amendment was not valid, and under the prior wording of the Bylaws, the four directors in question would have been removed from office. Your basic argument appears to be that the amendment was erroneous because the Association failed to provide at least five days' written notice of the meeting at which the amendment was going to be considered, in violation of N.C. Gen. Stat. § 55A-10-20.

The Association does not dispute that the amendment in question was raised by motion at the Board's June 28, 2024, meeting. The failure to provide notice of the potential amendment does not, however, invalidate the amendment. A basic tenet of corporate law is that "[a] director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting." N.C. Gen. Stat. § 55A-8-23. No objection based on the lack of notice was made by any director at the meeting, and all seven (7) members of the Board remained at and participated in the meeting, all as reflected by the minutes of the June 28th meeting. Accordingly, any notice requirement was waived. I have found no statutory or common law support for your bald assertion that the failure to meet notice requirements of N.C. Gen. Stat. § 55A-10-20 renders the amendment *void ab initio*.

III. Nature of Action

You have threatened derivative action, but frankly, that would not seem to be the appropriate vehicle for your clients' claims. A derivative proceeding is one brought by a member to enforce a legal right of the corporation, while an individual action is one brought to enforce a right which belongs to the individual personally. If the claim is that the Association failed to abide by its Bylaws – that is the personal claim of your clients. There cannot be a derivative proceeding where there is no injury to the Association, and the plaintiffs are not seeking to recover on behalf of the Association. The appropriate claim would instead be a direct claim for a declaratory judgment regarding the adoption of the amendment. Should your clients wish to bring an action for declaratory judgment to have their claims litigated, the Association would not dispute that there is an actual justiciable controversy between the parties for purposes of declaratory relief standing. However, the Association does dispute the propriety of a derivative action.

Before proceeding, your clients should also be aware that if litigation is commenced to challenge the Bylaws amendment, the Association will counterclaim with its own request for declaratory judgment related to the validity of the underlying removal request. The petition circulated for the removal of directors, and the question put before the members, was entirely inappropriate. The petition sought removal of a deceased person, a person that had resigned, "or

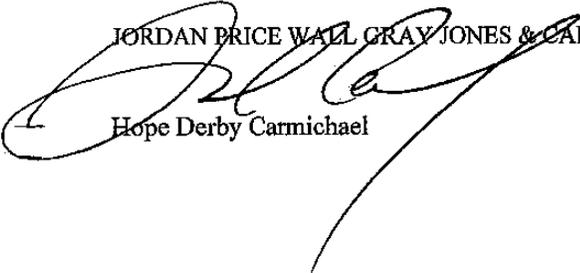
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any of their replacements for the remaining portions of any term without cause." It is axiomatic that before a director can be removed, the individuals voting to remove that person must know his or her identity. The Association has no basis at the present time to challenge the validity of the removal question given that the petition and subsequent vote had no effect on the composition of the Board, and any such challenge would have been moot. That reasoning does not apply, however, if your clients are seeking to invalidate the results as they now stand.

Should you wish to discuss matters further, please reach out to me.

Sincerely,

JORDAN PRICE WALL GRAY JONES & CARLTON, PLLC



Hope Derby Carmichael

cc: Board of Directors

4856-7283-7937, v. 1