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FOR REGISTRATION REGISTER OF DEEDS  
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NEW HANOVER COUNTY, NC  
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INSTRUMENT # 2003076818

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS, **SEASPRAY LANDING**

Drawn By: SEASPRAY B.O.D  
Reviewed By and return to: Charles D Meier  
Marshall, Williams & Gorham

**THIS AMENDMENT TO DECLARATION** made the 8<sup>th</sup> day of  
November, 2003, by SEASPRAY LANDING HOA, Inc., a  
private non-profit corporation, hereinafter referred to as  
"Association" or "HOA".

**WHEREAS**, the HOA is an association formed for the benefit  
of homeowners of certain property in New Hanover County, North  
Carolina, which is more particularly described as follows:

BEING all of SEASPRAY, Sections 1, 1A, 2, and 2A as the  
same is shown on maps thereof recorded in Map Book 37,  
Page 360, and Map Book 38, Page 31, Map Book 38, Page 101,  
and Map Book 39, Page 54 in the Office of the Register of  
Deeds of New Hanover County, North Carolina, reference to  
which is hereby made for a more particular description.

**WHEREAS**, said Sections of SEASPRAY, as aforesaid, were  
subjected to a Declaration of Covenants, Conditions and  
Restrictions, as recorded in Book 2373 at Page 447, and as  
amended in Book 2385, Page 800 and Book 2692, Page 225 of the  
New Hanover County Registry; and

**WHEREAS**, said Declaration provided, in Article XI Section  
4, that the same could be amended by an instrument duly recorded  
in the Office of the Register of Deeds of New Hanover County

signed by not less than two-thirds (2/3) of the Lot Owners within SEASPRAY; and

**WHEREAS**, the undersigned, representing not less than two-thirds (2/3) of the Lot Owners within SEASPRAY, have consented to the amendment of the Declaration of Covenants, Conditions and Restrictions, as recorded in Book 2373 at Page 447, and as amended in Book 2385, Page 800 and Book 2692, Page 225 of the New Hanover County Registry, as here in contained;

**AND, WHEREAS**, the Association and the undersigned Lot Owners desire to delete in their entirety said Declaration of Covenants, Conditions and Restrictions, as recorded in Book 2373, Page 447 and as amended in Book 2385, Page 800 and Book 2692, Page 225 of the New Hanover County Registry, and to provide for a uniform residential environment so as to preserve its value and to protect the present and future owners thereof.

**NOW, THEREFORE**, the Association and the undersigned Lot Owners, representing not less than two-thirds (2/3) of the Members within SEASPRAY, hereby declare that all of the Properties in SEASPRAY, shall be held, sold and conveyed, from and after the date of the recordation of this document, subject to the following easements, restrictions, covenants, and Conditions, which are for the purpose of protecting value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successor and assigns, and shall inure to the benefit of each owner thereof.

#### **ARTICLE I.**

**DEFINITIONS:** As used herein, the following terms shall mean:

Section 1. **Association and HOA** shall be used interchangeably to mean and refer to SEASPRAY Landing HOA , Inc., a private non-profit corporation formed primarily as a Homeowners Association for the Lot Owners in SEASPRAY, all of whom shall be members of the Association.

Section 2. **Owners** shall mean and refer to the record Owner whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties.

Section 3. **Properties** shall mean and refer to that certain real property herein before described, and such additions

thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. **Common Area** shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area owned by the Association at the time of the recordation of this Amendment is as follows:

**Being** all of that area shown and designated as Common Area as shown on the maps recorded in Map Book 37 at Page 360, Map Book 38, Page 31 Map Book 38, Page 101, and Map Book 39, Page 54 of the New Hanover County Registry, and all of the property described in a Deed recorded in Book 3154, Page 458, New Hanover County Register of Deeds.

Section 5. **Developer** shall mean and refer to Dal-Har Investments, Inc., and its successors and assigns.

Section 6. **Declaration** shall mean this instrument as it may be from time to time amended or supplemented.

Section 7. **Lot** shall mean and refer to any numbered lot shown upon the recorded plat of any section of SEASPRAY, now or hereafter recorded in the New Hanover County Registry.

Section 8. **Membership** shall mean and refer to the rights, privileges, benefits, duties and obligations which shall inure to the benefit of and burden each member of the Association.

Section 9. **Member** shall mean and refer to every person or entity who has a membership in the Association.

Section 10. **Bylaws** shall mean and refer to Amendment to By-Laws attached as Exhibit A.

## ARTICLE II.

### **PROPERTY RIGHTS**

Section 1. **Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right of the Association to suspend the voting rights and privileges of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of it's published rules and regulations;

- b The right of the Association to dedicate, transfer or mortgage all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, transfer or mortgage shall be effective unless an instrument signed by two-thirds (2/3) of the Members agreeing to such dedication or transfer has been recorded in New Hanover County Registry;
- c The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

SECTION 2. **DELEGATION OF USE.** Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### **ARTICLE III.**

#### **EASEMENTS**

SECTION 1. Easements are reserved as necessary in the Common Areas for installation and maintenance of underground utilities and drainage facilities.

SECTION 2. The Association, acting through its officers, agents, servants, and/or employees shall have the right of unobstructed access at all reasonable times to all Properties as may be reasonably necessary to perform the exterior maintenance called for in Article VIII of this Declaration.

SECTION 3. Each Lot and all Common Areas and facilities are hereby subjected to an easement for the repair, maintenance, inspection, removal, or other service of or to all electricity, television, telephone, water, sewer, utility, drainage, and painting of the exterior surfaces of all dwellings and the repair of all fences on individual Lots or other Common Areas and facilities, whether or not the cause of any or all of those activities originates on the Lots on which the work must be performed

SECTION 4. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the Lots and Common Area in the performance of their duties.

SECTION 5. In case of any emergency originating in or threatening any structure or building on any Lot or the Common Areas and facilities, regardless whether the Lot owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any Lot for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Lot Owners, and such right of entry shall be immediate.

SECTION 6. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

#### **ARTICLE IV.**

##### **MEMBERSHIP AND VOTING RIGHTS**

Management of the affairs of the Association shall be the right of its Board of Directors in accordance with the Declaration, By-laws, and Articles of Incorporation, as may be amended from time to time.

Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Each Member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

#### **ARTICLE V.**

## COVENANTS FOR ASSESSMENTS

Section 1. **CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT.** Each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. Annual assessments or charges; and
- b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and
- c. Any other assessment specifically provided by this Declaration or the By-Laws.

The annual and special assessments, together with interest, late charges, fines, costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, late charges, fines, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessments fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. **PURPOSE OF ASSESSMENTS.** The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners in the Properties and for the improvements and maintenance described in Article VIII. In addition, doing any other things necessary or desirable in the opinion of the Association to keep the Properties in neat and good order and to provide for the health, welfare, and safety of Owners and residents of Seaspray.

Section 3. **ANNUAL ASSESSMENTS.** Annual assessments shall be in an amount to be fixed from year to year by the Board of Directors which may establish different rates from year to year as it may deem necessary for the purposed set forth in Section 2 above. The amount of the annual assessment against each Lot for any given year shall be fixed at least 30 days in advance of the annual assessment period with written notice to Owners. The due date shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. The Association shall, upon demand, and for a reasonable charge

furnish a certificate signed by an officer of the Association setting forth whether the assessments of a specified Lot have been paid.

- a. The maximum annual assessment may be increased each year above five percent (5%) by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting duly called for this purpose.
- b. The Board of Directors may fix the annual assessment at an amount not in excess of the assessment for the previous year plus an increase of five percent (5%) without a vote of the Membership.

Section 4. **SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.**

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. **INSURANCE.** The Board of Directors on behalf of the Association, as a common expense, shall at all times keep the property of the Association, if any, insured against loss or damage by fire or other hazards and other such risks, including, but not limited to, directors' liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the Properties and Common Area, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each Member to insure his personal property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgages.

Section 6. **INSURANCE PREMIUMS.** All insurance policy premiums on the Common Area for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the Owners equally as an additional annual assessment, (herein called "Insurance Assessment"), which shall be in addition to the amounts provided for under Section 3 above, an amount sufficient to pay the annual cost of all such insurance premiums and deductibles.

Section 7. **NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4.** written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60) percent of all the votes shall constitute a quorum. If a quorum is not present, the meeting shall be adjourned and a subsequent meeting called with out notice other than announcement at this meeting. The required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. **UNIFORM RATE OF ASSESSMENT.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or annual basis.

Section 9. **DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS AND DUE DATES.** The annual assessments provided for herein shall commence as to all Lots at the time title is conveyed to Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least (30) days in advance of the annual meeting of the Association. Written notice of the annual assessment shall be sent to every Owner subject thereto, and for this purpose, the due date shall be deemed to be the first of each month. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association

setting forth whether the assessments on a specified Lot have been paid.

Section 10. **EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION.** Any assessment not paid within thirty(30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may file a Claim of Lien and/or bring an action at law against the owner personally obligated to pay the same, and/or foreclose the lien against the property and may pursue any other legal or equitable remedy available. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or by abandoning his Lot. Claims of Liens and foreclosure actions shall be filed under the provisions of G.S. 47F-3-116, which are incorporated herein by reference

Section 11. **SUBORDINATION OF THE LIEN TO MORTGAGE.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to the end of the redemption or upset bid period applicable to the foreclosure. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **ARTICLE VI.**

### **FIDELITY BONDS**

Section 1. **GENERAL.** The Association shall maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all the responsibility for the handling of its funds to a management agent, such fidelity bond shall be maintained by such management agent for its offices, employees and agents handling or responsible for funds of or administered on behalf of the Association.

Section 2. **AMOUNT OF COVERAGE.** The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the

Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds.

## **ARTICLE VII**

### **ARCHITECTUAL CONTROL**

Section 1. No building, fence, wall or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event said board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. No house plans will be approved unless the proposed house shall have a minimum of 1500 square feet of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas; provided, further, that shed type porches, even though attached to the house are specifically excluded from the definition of the aforesaid term "enclosed dwelling area."

Section 3. Since the establishment of inflexible building setback lines for location of houses on Lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines are established by these Restrictions. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved by the Architectural Control Committee. Also the initial privacy walls

erected on the Properties shall be deemed to comply with all survey requirements until such time as they are replaced.

Section 4. In the event of the destruction or damage to a home, by fire or some other natural calamity, reconstruction or repair of the same shall be completed within twelve (12) months after the construction of the same shall have commenced, or should reasonably have commenced, except where such completion or repair is impossible or would result in great hardship to the owner or builder, due to strikes, fires, national emergency or natural calamities.

Section 5. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than a single family dwelling not to exceed one and one half (1.5) story in height, and no more one (1) small accessory building (which must be contained within privacy fences) and provided the use of such dwelling or accessory building does not in the opinion of the architectural control committee overcrowd the site, and provided further, that such buildings are not used for any activity normally conducted as a business.

Section 6. All service utilities, fuel tanks, clothes lines, wood piles and trash and garbage accumulations are to be enclosed within a fence, wall, or plant screen of a type and size approved by the architectural control committee, so as to preclude the same from causing an unsightly view from any other residence within the subdivision. No additional fences shall at any time be placed or permitted to remain on any Lot without approval of the Architectural Control Committee.

Section 7. Off street parking for not less than two passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said Lot, which parking areas and the driveways thereto shall be constructed of concrete.

#### **ARTICLE VIII.**

##### **EXTERIOR MAINTENANCE**

The Association shall be responsible for maintaining, repairing, and replacing the planting easement areas, the storm water drainage system, including the retention pond, all drainage lines, pipes and ditches which are located on the properties, except those constructed by individual Lot Owners and/or located within individual Lots.

The Association shall maintain:

- All Common Areas including plantings, shrubbery, and walkways located thereon, and street lighting fixtures;
- All front yards, trees, shrubs, grass, and other landscaping as originally installed on each Lot, but excluding the irrigation system;
- The clubhouse, tennis courts, swimming pool, and mail box area;
- The fences (excluding gates), as determined by the Board;

The Association shall not be required to provide any additional repairs or maintenance to the dwellings located on Lots. All other repairs, maintenance or replacements are the responsibility of the Owners. However, the Association will replace roofs on all dwellings in accordance with its useful life as determined by the Board and the Association will provide exterior washing, caulking and painting of all dwellings on an as-needed basis to be determined by the Board.

In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over, on, upon, through and across each Lot and the structures and improvements thereon and its limited Common Area, if any, at all reasonable time to perform the maintenance and repair required under this Article.

In the event that any maintenance or repair of the Lot, and any structures and improvements thereon, is required to be done by the Association or performed as a result of negligence or willful acts of the Owner, tenants, contract purchasers, guest or invitees of the owner, then, in the sole discretion of the Board of Directors, the cost of such maintenance or repairs, not fully covered by insurance, may be levied as a special assessment against only the Lot sustaining such damage which the owner, having been duly notified, shall pay to the Association within thirty(30) days of the date of written notice requesting such payment.

## ARTICLE IX.

### USE RESTRICTIONS

SECTION 1. LAND USE AND BUILDING TYPE. All Lots shall be used for residential purposes only and no commercial or business use, whether for profit or non-profit, is permitted unless approved in advance in writing by the Board of Directors of the Association. Any building erected, altered, placed or permitted to remain on any Lot shall be subject to the provisions of Article VII of this Declaration.

SECTION 2. NUISANCES. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No solicitations, commercial or otherwise, will be permitted within SEASPRAY without written permission from the Board of Directors.

SECTION 3. Impervious Surface. No more than 3000 square feet of any Lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, slate, or similar materials, but specifically excluding walkways and decks of wood provided that such walkways and decks of wood are constructed in such a manner as to allow storm water run-off to infiltrate the soil beneath the same. This covenant is intended to insure compliance with storm water run-off rules heretofore adopted by the State of North Carolina. Accordingly, its provisions may be enforced by the State of North Carolina.

SECTION 4. JUNK VEHICLES. No inoperable vehicle or vehicle without current registration and insurance and no Tractor-trailers will be permitted on the Properties. The Association shall have the right to have all such vehicles towed away at the owner's expense.

SECTION 5. VEHICLE REPAIRS. No repairs to any vehicle may be made in driveways, but only in garages and those repair activities shall not be visible from the street. No inoperable or immobile vehicle, whether or not containing current registration, shall be permitted to remain in any driveway or on any street.

SECTION 6. SIGNS ARE PROHIBITED. No "For Sale" signs or any other signs shall be permitted on any Lot or in the

Common Areas and facilities without express written permission of the Board.

SECTION 7. **TEMPORARY STRUCTURES.** No structure of a temporary character, trailer, tent, shack, garage, barn or other out building shall be used on any Lot any time as a residence either temporarily or permanently.

SECTION 8. **RECREATIONAL OR COMMERCIAL VEHICLES.** No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle, shall be permitted to remain on any Lot, or in parking spaces, at any time, unless by written consent of the Association, or if properly stored out of sight in garages.

SECTION 9. **ANIMALS.** No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed and personally escorted.

SECTION 10. **OUTSIDE ANTENNAS.** No outside radio or television antennas shall be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its Architectural Control Committee.

SECTION 11. **EXTERIOR LIGHTS.** All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot shall be clear, white, or non-frost lights or bulbs.

SECTION 12. **WINDOW COVERINGS.** All drapes, curtains, or other similar materials hung at windows, or in any manner as to be visible from the outside, or any building erected upon any Lot shall be white or neutral background material.

SECTION 13. **RENTAL PROPERTY.** To protect the value and desirability of the Properties, Owners who lease their Lots within SEASPRAY shall do so for a period of not less than twelve (12) consecutive months. Owners are responsible for notifying their leasing agents of this requirement.

SECTION 14. **OCCUPANCY.** No more than three (3) unrelated persons shall occupy one dwelling.

SECTION 15. DUMPING. No debris dumping of any kind shall be permitted in the Common Areas, Buffer Areas, behind Fences, around the Pond, and the Club House Area.

## ARTICLE X

### RIGHTS OF INSTITUTIONAL LENDERS

Section 1. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, saving banks, insurance companies, the Veterans Administration, the Federal Housing Authority, the Federal National Mortgage Association and other reputable mortgage lenders and guarantors and insurers of such first mortgages, So long as any Institutional Lender or Institutional lenders shall hold any mortgage upon any Lot, or shall be the owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

- a. To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such financial statement and report to be furnished by April 15 of each of calendar year.
- b. To be given notice by the Association of the call of any meeting of the Membership to be held for the purpose of considering any proposed Amendments to the Declaration, or the Articles of Incorporation and By-Laws of the Association, Which notice shall state the nature of the amendment being propose, and to be given permission to designate a representative to attend all such meetings.
- c. To be given notice of default in the payment of assessments by any owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.
- d. To inspect the books and records of the Association and the Declaration, By-Laws and any Rules and Regulations

during normal business hours, and to obtain copies thereof.

- e. To give notice by the Association of any substantial damage to any part of the Common Area.
- f. To be given notice by the Association if any portion of the Common Area is made the matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Section 2. Whenever any Institution Lender Guarantor or insurer desires the benefits of the provisions of this section requiring notice to be given or to be furnished a financial statement, such lender shall serve written notice of such fact upon the Association by registered mail or certified mail addressed to the Association and sent to its address stated herein, or to the address of the of the property, identifying the Lot upon which any such Institution Lender or Institution Lenders hold any mortgage or mortgages, or identifying any Lot owner by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institution Lender.

## **ARTICLE XI.**

### **GENERAL PROVISIONS**

SECTION 1. **ENFORCEMENT.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all provisions of this Declaration, Articles of Incorporation, Bylaws, or duly adopted Rules or Regulations. Failure by the Association or by an Owner to enforce any such provisions shall in no event be deemed a waiver of the right to do so thereafter. The Association shall be entitled to an award of its reasonable attorneys fees in any such proceeding.

SECTION 2. **ENFORCEMENT OF STORM WATER RUNOFF REGULATIONS.** The State of North Carolina is hereby made a beneficiary of this Declaration to the extent necessary to enforce its storm water runoff regulations as the same may be amended from time to time.

SECTION 3. **SEVERABILITY.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

SECTION 4. **LOTS SUBJECT TO DECLARATION.** All present and future owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot as though such provisions were made a part of each and every deed of conveyance or lease.

SECTION 5. **AMENDMENT OF DECLARATION.** The covenants and restrictions of this Declaration may be amended by an instrument duly recorded in the office of the Register of Deeds of New Hanover County signed by not less than two-thirds (2/3) of the Lot Owners; provided that no amendment shall alter any obligation to pay ad-volarem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein.

SECTION 6. **POWERS OF THE BOARD.** In addition to all other powers granted to the Association under this Declaration, the Articles of Incorporation, and the Bylaws, the Association shall have the powers set forth in G.S. 47F-3-102.

SECTION 7. **CONFLICT.** It is the intent that the provisions of the Articles of Incorporation, the Declaration, Bylaws, and adopted Rules and Regulations be cumulative and that no provision of one will conflict with another and that each should be construed in harmony with the other. However, in the event of an irreconcilable conflict of any such provisions, the provisions shall be construed as follows:

a. Articles of Incorporation shall control over the Declaration, Bylaws, and Rules and Regulations;

b. The Declaration shall control over the Bylaws and Rules and Regulations; and

c. The Bylaws shall control over the Rules and Regulations.

IN WITNESS whereof, the undersigned, being the president of Seaspray Landing HOA, Inc. does, by his/her execution thereof, that the Amendment to Declaration of Covenants, Conditions and Restrictions, Seaspray, were duly adopted by the vote of at least two thirds (2/3) of the Lot Owners in person or by proxy at a meeting duly called and held in accordance with the Declaration and By-Laws, and that he/she executed this instrument as an officer of Seaspray Landing HOA, Inc. the day and year first above written.

SEASPRAY LANDING HOA, INC.

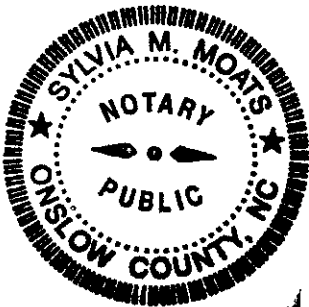
BY: *Peter J. Mudar*  
Print Name: Peter J. Mudar  
Title: President

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Sylvia M. Moats, a notary public, certify that Peter J. Mudar personally came before me this day and acknowledged that he/she is President of Seaspray Landing HOA, Inc. and that he/she is President being authorized to do so executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal this 1<sup>st</sup> day of December 2003.



*Sylvia M. Moats*

NOTARY PUBLIC

MY COMMISSION EXPIRES: 6-20-04

**EXHIBIT A  
AMENDMENT TO BY-LAWS  
SEASPRAY LANDING HOA, INC.**

**AMENDMENT TO**

**BY-LAWS**

**OF**

**SEASPRAY LANDING HOA, INC.**

**WHEREAS**, By-laws of SEASPRAY LANDING HOA, Inc. were heretofore adopted; and

**WHEREAS**, Article XII of said By-laws provided that the same could be altered, amended or added to at any duly called meeting of the Members of the Association, in accordance with the notice and quorum requirements therein contained; and

**WHEREAS**, The Association duly called a meeting, upon proper notice, on the    8th    day of   November  , 2003, and that at said meeting, a quorum consisting of the majority of the Members of the Association were present or represented by proxy, who thereupon, upon affirmative vote, voted to Amend the By-Laws of the Association as hereinafter set forth; and

**WHEREAS**, after said vote, the Board of Directors of the Association approved said Amendment, by an affirmative vote of said directors, and accordingly, the By-laws of SEASPRAY LANDING Homeowners Association, Inc. are hereby amended to read as follows:

**ARTICLE I**

**GENERAL**

Section 1. **THE NAME:** The name of the corporation shall be **SEASPRAY LANDING HOA, INC.**

Section 2. **PRINCIPLE OFFICE:** The principle office of the corporation shall be the Club House on SEASPRAY Drive, Wilmington, NC 28405, or at such other place, as may be subsequently designated by the Board of Directors.

Section 3. **APPLICATION:** All present and future Owner's mortgages, lessees, and occupants of Lots in SEASPRAY LANDING HOA, Inc. are subject to these By-Laws, the Declaration of Covenants, Articles of Incorporation and Rules and Regulations pertaining to the use and operation of the Association and the Properties. The act of ownership or occupancy shall constitute an acceptance of the provision of these instruments and an agreement to comply therewith.

## ARTICLE II

### **DEFINITIONS**

Section 1. **DEFINITION:** As used herein, the term "Corporation" may be used interchangeably with and shall be the equivalent to "Association" as defined in the Declaration of Covenants, Conditions and Restrictions of **SEASPRAY** (herein called the "Declaration"), which shall be applicable herein, unless otherwise defined herein.

Section 2. **ASSOCIATION** shall mean and refer to **SEASPRAY LANDING HOA, INC.**, its successors and assigns.

Section 3. **PROPERTIES** shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions of **SEASPRAY** and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. **COMMON AREA** shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 5. **LOT** shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. **OWNER** shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties.

Section 7. **DECLARATION** shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

Section 8. **MEMBER** shall mean and refer to those persons entitled to membership in the Association as provided in the Declaration.

Section 9. **CONSTRUCTION:** Whenever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, wherever the context so requires.

Section 10 **OTHER DEFINITIONS:** All definitions set forth in the Declaration shall be applicable herein, unless otherwise defined herein.

### **ARTICLE III**

#### **MEETINGS OF MEMBERSHIP**

Section 1. **PLACE:** All meetings of Members shall be held at the office of the Association or such other place as may be stated in the notice.

Section 2. **ANNUAL MEETINGS:**

- a. Regular annual meetings shall be held on the second Saturday in November in each year, if not a legal holiday, and if a legal holiday, then on the next secular day following, unless otherwise determined by the Board.
- b. All annual meetings shall be held at such hour as is determined by the Board.
- c. At the annual meeting, the Members shall elect the new Members of the Board of Directors and transact such other business as may properly come before the meeting.
- d. Written notices of the annual meeting shall be served upon or mailed to each Member entitled to vote thereafter at such address as appears on the books of the corporation, at least ten but not more than fifty days prior to the meeting. Each Member shall advise the

Secretary of any address change, and the giving of said notice shall be in all respects sufficient if sent to the address of the Member which is then on file with the Secretary.

Section 3. **MEMBERSHIP LIST:** At least ten days but not more than fifty days before every election of directors, a complete list of Members entitled to vote at such election, with residence of each, shall be prepared by the Secretary. Such list shall be produced and kept open for said ten days prior to and throughout the election at the office of the corporation, and shall be open to examination by any Member throughout such time.

Section 4. **SPECIAL MEETINGS:**

- a. Special meetings of the Members, for any purpose or purposes not prescribed by statute, the Articles of Incorporation, or these By-Laws, may be called by the Board or at the request, in writing, of one third (1/3) of the Members. Such request shall state the purpose or purposes of the proposed meeting.
- b. Written notice of a special meeting of Members, stating the time, place and object thereof, shall be served upon or mailed to each Member entitled to vote thereat, at such address as appears on the books of the corporation, at least ten days before such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, postage prepaid, addressed to the Member at such address as appears on the records of the Association.
- c. Business transacted at all special meetings shall be confined to the objects stated in the notice thereof.

Section 5. **QUORUM:** Over fifty percent of the total number of Members, of the corporation, present in person or represented by proxy, shall be requisite to and shall constitute a quorum at all meetings of the Members for the transaction of business, except as otherwise provided by statute, by the Articles of Incorporation or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting. At such adjourned meeting at which

quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called. If adjournment extends past sixty days, notice or the date on which the adjourned meeting is to be reconvened shall be given as herein provided for regular meetings.

Section 6. **VOTE REQUIRED TO TRANSACT BUSINESS**: When a quorum is present at any meeting, a majority of the votes cast, in person or represented by written proxy filed with the Secretary in advance of the meeting, shall decide any question brought before the meeting, unless the question is one upon which, by express provision of the statutes, the Declaration of Restrictions, or these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. There shall be no cumulative voting.

Section 7. **RIGHT TO VOTE**: Each Owner shall be entitled to one vote. At any meeting of the Members, every Member having the right to vote shall be entitled to vote in person or by proxy. Such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof. If more than one person or entity owns a Lot, the co-Owners shall file a certificate with the Secretary naming the person authorized to cast votes for said Lot. If same is not on file, the vote of any co-Owner present who is acceptable to other co-Owners of that Lot present shall be accepted as the vote of all co-Owners. Any legal entity, which is an Owner, shall have the right to membership in the corporation.

Section 8. **WAIVER AND CONSENT**: Whenever the vote of Members at a meeting is required or permitted by a provision of the statutes, the Declaration of Restrictions, or these By-Laws to be taken in connection with any action of the corporation, the meeting and vote of Members may be dispensed with if all Members who would have been entitled to vote upon the action of such meeting, if such meeting were held, shall consent in writing to such action being taken.

Section 9. **ORDER OF BUSINESS**: The order of business at annual Members' meetings and as far as practical at other Members' meetings, shall be:

- a. Roll call and certification of proxies;
- b. Proof of notice of meeting or waivers of notice;
- c. Reading of minutes of prior meeting;
- d. Officers' reports;

- e. Committee reports;
- f. Approval of budget;
- g. Elections of directors
- h. Unfinished business;
- i. New business;
- j. Adjournment.

Except as herein provided, Robert's Rules of Order shall be applicable to the conduct of all meetings.

#### **ARTICLE IV**

##### **BOARD OF DIRECTORS**

Section 1. **NUMBER AND TERM:** The number of Directors which shall constitute the whole Board of Directors (the Board) shall be not less than five and not more than seven, all of whom shall be Members, or spouses of Members, of the Association. Within the limits above specified, the number of directors shall be determined by the Members at the annual meeting; the Directors shall initially be elected to serve staggered terms, i e., three for three years, two for two years, two for one year, etc., and they shall serve until their successors shall be elected and qualify. Thereafter, each director shall be elected for a term of three (3) years. Directors may serve for a successive term, provided they are voted upon and elected by the Members at the annual meeting. At any time the term of the newly elected Directors may be modified to provide a logical rotation wherein no more than three (3) new Directors are asked to serve.

Section 2. **VACANCY AND REPLACEMENT:** If the office of any Director becomes vacant by reason of transfer of ownership, death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, at a special meeting of Directors duly called for this purpose, shall choose a successor or successors, who shall hold office for the un-expired term in respect to which such vacancy occurred.

Section 3. **REMOVAL:** Directors may be removed with or without cause by an affirmative vote of a majority of the total Membership. No Director shall serve on the Board after his Membership in the Association shall be terminated for any reason whatsoever.

Section 4. **POWERS AND DUTIES**: The property and business of the corporation shall be managed by the Board, which may exercise all corporate powers not specifically prohibited by the statute, the Articles of Incorporation, or the Declaration. The powers of the Board shall specifically include, but not be limited to the following:

a. To make and collect regular and special assessments and establish the time within which payment of same are due

b. To adopt and publish Rules and Regulations governing the use of the Common Area and Lots, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof.

c. To suspend the voting rights and right to use the Common Area of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days, for infraction of published Rules and Regulations.

d. To declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

e. To purchase the necessary equipment and tools required in the maintenance, care and preservation of the property of the Association.

f. To insure and keep insured the property of the Association in the manner set forth in the Declaration against loss from fire and/or other casualty and the Association against public liability, and to purchase such other insurance as the Board may deem advisable.

g. To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin or seek damages from Members or any person for violation of these By-Laws, Articles of Incorporation, Rules and Regulations and Declaration.

h. To employ and compensate such personnel as may be require for the maintenance and preservation of the Properties.

i. To contract for management of the Association and to delegate to such other party all powers and duties of the Association except those specifically required by the Declaration to have specific approval of the Board or Members.

j. To impose a special assessment (against any Owner), not to exceed the maximum dollar amount allowed by Law for each occurrence, for the violation by the Owner or his guest of any Rule or Regulation adopted by the Board or the breach of any By-Law contained herein, or the breach of any provision of the Declaration. Such assessment shall be in addition to any costs incurred or to be incurred by the Association as a result of the violation of the Rules, Regulations, By-Laws, or Declaration.

k. To use and expend the assessments collected to maintain, care for and preserve the Common Areas and facilities, except those portions thereof which are required to be maintained, cared for and preserved by the Owners, all in accordance with Article VIII of the Declaration.

l. To enter into and upon the Lots when necessary and at as little inconvenience to the Owner as possible in connection with such maintenance, care and preservation.

m. To propose and adopt an annual budget for the property.

n. To adopt Rules and Regulations pursuant to Article IX of the By-Laws.

o. To exercise all powers and duties contained in the Declaration, Articles of Incorporation, and By-Laws and those powers set forth in G.S. 47F-3-102.

Section 5. **LIABILITY:** The Directors shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct, bad faith, or gross negligence.

Section 6. **COMPENSATION:** Neither Directors nor Officers shall receive compensation for their services as such, provided that the corporation may budget such sums as it may deem appropriate for direct reimbursement of actual expenses incurred by the directors or officers in behalf of the corporation.

Section 7. **MEETINGS:**

a. The first meeting of each Board newly elected by the Members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board shall be held at the same place as the general Members' meeting, and immediately before or after the adjournment of same.

b. Special meetings shall be held whenever called by the direction of the President or a majority of the Board. The Secretary shall give notice of each special meeting either personally, by mail or telegram, at least three days before the date of such meeting, but the directors may, in writing, waive notice of the calling of the meeting, before or after such meeting.

c. A majority of the Board shall be necessary and sufficient at all meetings to constitute a quorum for the transaction of business, and the act of a majority present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at the meeting, the Directors then present may adjourn the meeting without notice other than announcement at the meeting.

d. Action taken by a majority of the Directors without a meeting shall constitute Board action if written consent to the action in question is signed by all the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 8. **ORDER OF BUSINESS:** The order of business at all meetings of the Board shall be as follows:

- a. Roll call;
- b. Proof of notice of meeting or waiver of notices;
- c. Reading of Minutes of last meeting;
- d. Consideration of communications;
- e. Elections of necessary directors and officers;
- f. Reports of officers and employees;
- g. Reports of committees;
- h. Unfinished business;
- i. Original resolutions and new business;
- j. Adjournment.

Section 9. **ANNUAL STATEMENT:** The Board shall present, no less often than at the annual meeting, a full and clear statement of the business and condition of the Association, including a report of the operating expenses of the Association and the assessments paid by each Member.

Section 10. **NOMINATING COMMITTEE:** Not later than October 1 of the year preceding the annual meeting of the Association, the Board shall appoint a Nominating Committee.

a. Said committee shall consist of three (3) Members of the Association in good standing, at least one of which shall be from the at large Membership, and one (1) outgoing Members of the then current Board.

b. Each appointee shall contact Members, or Members' spouses, to determine their interest in serving on the Board. The names of interested individuals shall be presented in writing by the Nominating Committee to the Board of Directors for final consideration and approval.

c. The Members shall be advised in writing of the names of the nominees along with a brief resume of each in the general mailing relative to the annual meeting.

## **ARTICLE V**

### **OFFICERS**

Section 1. **EXECUTIVE OFFICERS:** The Executive Officers of the corporation shall be a President, Vice President, Secretary and Treasurer; all of whom shall be elected annually by the Board from its Members. No two offices may be united in one person. If the Board so determines, there may be more than one Vice President.

Section 2. **SUBORDINATE OFFICERS:** The Board may appoint such other officers and agents from the Membership as the may deem necessary, who shall have such authority and perform such duties as from time to time may be prescribed by said Board.

Section 3. **TENURE OF OFFICERS: REMOVAL:** All Officers shall be subject to removal, with or without cause, at any time by action of the Board. The Board may delegate powers of removal of subordinate officers and agents to any officer.

Section 4. **THE PRESIDENT:**

a. The President shall preside at all meetings of the Members and directors; he shall have general and active management of the business of the corporation; he shall see that all orders and resolutions of the Board are carried into effect; he shall execute bonds, mortgages, deeds of trust and other contracts requiring a seal, under the seal of the corporation.

b. He shall have general superintendence and direction of all the other officers of the corporation, and shall see that their duties be performed properly.

c. He shall submit a report of the operations of the corporation for the fiscal year to the directors whenever called for by them, and to the Members at the annual meeting, and from time to time shall report to the Board all matters within his knowledge which the interest of the corporation may require to be brought to their notice.

d. He shall be an ex-officio Member of all committees, and shall have the general powers and duties of supervision and management usually vested in the office of the President of a corporation.

e. He shall assume or assign responsibility for renting the clubhouse under terms and conditions adopted by the Board.

Section 5. **THE SECRETARY:**

a. The Secretary shall keep the minutes of the Members' and of the Board's meetings in one or more books provided for that purpose.

b. He shall see that all notices are fully given in accordance with the provisions of these By-Laws or as required by law.

c. He shall be custodian of the corporate records and of the seal of the corporation and shall see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized with the provision of these By-Laws.

d. He shall keep a register of the post office address of each Member, which shall be furnished to the Secretary by such Member.

e. In general, he shall perform all duties incidental to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 6. **THE VICE PRESIDENT:**

a. The Vice President shall be vested with all the powers and required to perform all the duties of the President in his absence and such other duties as may be prescribed by the Board.

Section 7. **TREASURER:**

a. The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall deposit all monies and other valuable effects in the name and to the credit of the corporation, in such depositories as may be designated by the Board.

b. He shall disburse the funds of the corporation as ordered by the Board, taking proper vouchers for such disbursements, and shall render the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the corporation. Such records shall be open to inspection by Members at reasonable times.

c. He may be required to give the corporation, at the corporation's cost, a bond in a sum and with one or more sureties satisfactory to the Board, for the faithful performance of the duties of his office, and the restoration to the corporation, in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the corporation.

d. He shall maintain a register for the names of any mortgage holders or lien holders on units who have required in writing that they be registered and to whom the corporation will give notice of default in case of non-payment of assessments. No responsibility of the corporation is assumed with respect to said register except that it will give notice of default of any Owner in his obligations to the corporation to any registered mortgagee or lienor therein, if so requested by said mortgagee or lienor.

e. With the approval of the Board, he shall be authorized to delegate all or part of his responsibilities to competent accounting, collection or management personnel, pursuant to written definition of the responsibilities delegated to, and the condition of performance imposed upon, such personnel; but in such event, the Treasurer shall retain supervisory responsibilities.

Section 8. **VACANCIES**: If the office of any director or officer becomes vacant by reason of death, resignation, disqualification or otherwise, the remaining directors, by a majority vote of the remaining directors provided for in these By-Laws, may choose a successor or successors who shall hold office for the un-expired term. If the number of directors falls below three, a special Members' meeting shall be called for the purpose of filling such vacancies in the Board of Directors.

Section 9. **RESIGNATIONS**: Any director or officer may resign his office at any time, such resignation to be made in writing, and to take effect from the time of its receipt by the Board of Directors, unless some later time is fixed in the resignation, and then from that date. The acceptance of a resignation by the Board shall not be required to make it effective.

## ARTICLE VI

### **NOTICES**

Section 1. **DEFINITION**: Whenever under the provisions of the statutes, the Declaration of Restrictions, the Articles of Incorporation, or these By-Laws, notice is required to be given to any director or Member, it shall not be construed to mean personal notice, but such notice may be given in writing by mail, by depositing the same in a post office or letter box in a postpaid, sealed envelope, addressed as appears on the books of the corporation.

Section 2. **SERVICE OF NOTICE - WAIVER**: Whenever any notice is required to be given under the provisions of the statutes, the Declaration of Restrictions, The Articles of Incorporation, or these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

Section 3. **ADDRESS:** The address for notice of the corporation shall be that of the principal office of the corporation and the Registered Agent for service of process on the corporation shall be Secretary of the Association or any such agency as designated by the Board.

## **ARTICLE VII**

### **FINANCES**

Section 1. **FISCAL YEAR:** The fiscal year shall be the calendar year.

Section 2. **CHECKS:** All checks or demands for money and notes of the corporation shall be signed by any two of the of the following officers: President, Secretary, Vice President or Treasurer, or by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. **EXPENDITURES:** Notwithstanding anything in these By-Laws or the Declarations which authorize expenditures, no expenditures for capital improvements of the Common Areas and facilities exceeding \$5,000.00 shall be made without the approval of two-thirds (2/3) vote of the Membership, except for the repair of the Common Areas and facilities due to damages or destruction of which repair shall occur as provided in the Declaration.

Section 4. **DETERMINATION OF ASSESSMENTS:**

a. The Board shall determine from time to time the sum or sums necessary and adequate for the common expenses of the Association. At the annual meeting of the corporation, such budget shall be submitted to the Members for approval.

As approved, the budget shall constitute the basis for all regular assessments for common expenses against Lot Owners, which assessments shall be due and payable periodically as determined by the Board. Common expenses shall include expenses for the operation, maintenance, repair or replacement of the Common Areas and facilities, costs of carrying out the powers and duties of the corporation, all insurance premiums and expenses relating thereto, and any other expenses designated as common expense from time to time by the Board of Directors of the corporation, including but not limited to, common expenses incurred in accordance with Article VIII of the Declaration.

b. The Board is specifically empowered on behalf of the Association to make and collect assessments and to maintain, repair, renovate and replace any of the property of the Association. Assessments shall be payable periodically as determined by the Board

c. Special assessments for common expenses not adequately funded through the regular assessments may be required by the Board and shall be levied and paid in the same manner as hereinbefore provided for regular assessments. Notwithstanding anything in these By-Laws or the Declaration which authorize assessments, no special assessment exceeding \$300.00 per Lot per annum for the improvement of the Common Areas and facilities shall be made without the assent of two-thirds (2/3) vote of the Membership, except for the repair of the Common Areas and facilities due to damages, and destruction, which repair shall occur as provided in the Declaration.

d. Expenditures for clean up and damage repair after major storms are unlimited but any special assessment needed for this purpose will fall under the \$300.00 annual limit without a vote of the Membership. If an assessment over \$300.00 per Lot be required, such assessment shall have the assent of two-thirds (2/3) votes of the Membership at a meeting duly called for this purpose.

e. Special assessments against any Owner for: (i) any repair, maintenance or replacement undertaken in behalf of the Owner for any damage to the Common Areas or facilities caused by such Owner or the guests, tenants or invitees of such Owner; or (ii) any other valid purpose authorized by the Declaration, shall be levied at such times as is determined by the Board.

f. When the Board has determined the amount of any assessment, the Treasurer of the Corporation (or the personnel to whom such authority has been delegated) shall mail or present a statement of the assessment to each of the assessed Owners. All assessments shall be payable to the corporation, and upon request, the Treasurer or his designated agent shall give a receipt for each payment made.

g. The Board may enter into a management contract with third parties to whom the Board may delegate the power to levy and collect assessments approved by the Board or required by the Declaration of Restrictions.

h. All assessments not paid when due shall bear interest at such rate as is determined by the Board of Directors, not to exceed the maximum permissible rate allowed by law.

Section 5. **EXCESS OF ASSESSMENTS**: In any year in which there is an excess of assessments received over amounts actually used or payable for the purposes described in these By-Laws and in the Declaration, such excess shall, unless otherwise determined by the Board of Directors of the Association, be deposited in a capital reserve account for use in replacement, repair or maintenance of the Common Areas of the Association

Section 6. **NON-PROFIT CORPORATION**: The seal of the corporation shall have inscribed thereon the name of the corporation, and the words "Corporate Seal". Said seal may be used by causing it to be impressed, affixed, reproduced or otherwise.

## ARTICLE VIII

### **DEFAULT**

Section 1. **ENFORCEMENT OF LIEN FOR ASSESSMENTS**: In the event an Owner does not pay any sums, charges, or assessments required to be paid to the corporation by the due date, the corporation, acting on its behalf or through its Board, may enforce its lien for assessments, or take such other action to recover the sums, charges or assessments to which it is entitled, in accordance with the Declaration and the statutes made and provided for both.

Section 2. **GOVERNMENTAL LIENS AND ASSESSMENTS**: In the event that an Owner fails to pay any tax or assessment lawfully assessed by any governmental subdivision within which the property is situated by the date such tax or assessment is due, the Board may pay the same from the funds of the corporation and specially assess such Owner for the amount paid.

Section 3. **FORECLOSURE**: If the corporation becomes the Owner of a Lot by reason of foreclosure, it shall offer said Lot for sale and at such time as a sale is consummated, it shall deduct from the proceeds of said sale all sums of money due it for assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, funds necessary to discharge any liens or mortgages of record, and any and all expenses incurred in the resale of the Lot, which shall include but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for the repairing and

refurnishing of the Lot in question. All monies remaining after deducting the foregoing items of expenses, costs and other deductions shall be returned to the former Owner of subject Lot.

Section 4. **OTHER REMEDIES:** In the event of violation of the provisions of the Declaration as the same are defined in the Declaration, for thirty days after notice from the Association to the Lot Owners to correct said violation, the corporation, on its behalf or by and through its Board of Directors, may bring appropriate action to enjoin such violation or may enforce the provisions of said Declaration, or may sue for damages, or take such other courses of action, or other legal remedy as it or they may deem appropriate.

Section 5. **LEGAL COSTS:** In the event any legal action is brought against any Owner and results in a judgment for the corporation, the Owner shall pay the corporation's reasonable attorney's fees, costs of collection, and court costs.

Section 6. **INTENT:** Each Owner, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of nuisance, regardless of the availability of the other equally adequate legal procedures. It is the intent of all Owners of Lots to give to the corporation a method and procedure which will enable it at all times to operate on a business-like basis, to collect those monies due and owing it from the Owners of Lots, and to preserve each Lot Owner's right to enjoy his Lot, free from unreasonable restraint and nuisance.

## **ARTICLE IX**

### **RULES AND REGULATIONS**

In addition to the other provisions of these By-Laws, any Rules and Regulations (adopted by the Board), together with any subsequent changes shall govern, to the extent not inconsistent with these By-Laws and the Declaration, the use of the Lots located in the Properties and the conduct of all Owners, residents and guests. Such Rules and Regulations shall be subject to changes as may be deemed appropriate by the Board or Directors. Any modifications in the Rules and Regulations may be made by the Board in accordance with Article IV, Section 4, of the By-Laws.

**ARTICLE X**

**JOINT OWNERSHIP**

Membership may be held in the name of more than one Owner. In the event ownership is in more than one person, all of the joint Owners shall be entitled collectively to only one voice or ballot in the management of the affairs of the corporation, and the vote may not be divided between plural Owners. The manner of determining who shall cast such vote shall be as set forth in Article III, Section 7.

**ARTICLE XI**

**INDEMNIFICATION**

The Corporation may indemnify any person made a party to an action by reason of his being or having been a director or officer of the Association against the reasonable expenses including attorney's fees actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, except in relation to such matters as to which such director or officer is adjudged to have been guilty of gross negligence or misconduct in the performance of his duty to the Corporation.

**ARTICLE XII**

**AMENDMENT**

These By-Laws may be amended at any time by the affirmative vote of two-thirds (2/3) of the Members at any meeting duly called for that purpose at which a quorum of more than fifty percent (50) is present in person or by proxy; provided that the notice of such meeting shall contain a copy of the proposed amendment verbatim which has been approved by a majority of the Board or Directors.

**ARTICLE XIII**

**CONSTRUCTION**

Should any of the By-Laws herein imposed be void or become unenforceable at law or in equity, the remaining provisions of this instrument shall nevertheless be and remain in full force and effect.


**CONFLICT**

It is the intent that the provisions of the Articles of Incorporation, the Declaration, Bylaws, and adopted Rules and Regulations be cumulative and that no provision of one will conflict with another and that each should be construed in harmony with the other. However, in the event of an irreconcilable conflict of any such provisions, the provisions shall be construed as follows:

- a. Articles of Incorporation shall control over the Declaration, Bylaws, and Rules and Regulations;
- b. The Declaration shall control over the Bylaws and Rules and Regulations; and
- c. The Bylaws shall control over the Rules and Regulations.

The foregoing were adopted as the revised and amended By-Laws of SEASPRAY HOA, INC. at a meeting of its Members and its Board of Directors held on the 8th day of NOVEMBER 2003.

Certified to be correct, this the 8th day of NOVEMBER, 2003.



\_\_\_\_\_  
President of  
Board of Directors of  
SEASPRAY LANDING HOA, INC.



REBECCA T. CHRISTIAN  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*  
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AMD DECL 39 PGS \$125.00

Recorder: KIMBERLY K CARDER

\*\*\*\*\*  
State of North Carolina, County of New Hanover

The foregoing certificate of SYLVIA M MOATS Notary is certified to be correct. This 2 ND of December 2003  
REBECCA T. CHRISTIAN , REGISTER OF DEEDS

By Kimberly K Carder  
Deputy/Assistant Register of Deeds

\*\*\*\*\*  
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