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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS FOR  
OAK HARBOUR SUBDIVISION**

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NORTH CAROLINA

BRUNSWICK COUNTY



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**AMENDED AND RESTATED DECLARATION OF COVENANTS FOR  
OAK HARBOUR SUBDIVISION**

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS FOR OAK HARBOUR SUBDIVISION** (this "Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by **OAK HARBOUR PROPERTY OWNERS ASSOCIATION, INC.**, a North Carolina non-profit corporation (the "Association").

WITNESSETH:

WHEREAS, the Association is the homeowners association for all owners in fee simple of certain real property located in Brunswick County, North Carolina, which property is more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference (collectively, "Oak Harbour");

WHEREAS, Oak Harbour was originally developed by Frank Stanley and Newman E. Stanley (the "Initial Developer") and was made subject to the Covenants and Restrictions for Oak Harbour Unit One recorded in Book 767, Page 293 of the Brunswick County Registry, as amended in Book 888, Page 644; Book 897, Page 328 of the Brunswick County Registry (collectively, the "Prior Declaration");

WHEREAS, Frank Stanley was removed as a developer by that Addendum recorded in Book 888, Page 644 of the Brunswick County Registry; and Newman E. Stanley no longer owns any Lots at Oak Harbour;

WHEREAS, Newman E. Stanley has relinquished control of the Association by releasing his position on the Board of Directors in approximately June 2015 and he has conveyed the common areas serving Oak Harbour to the Association pursuant to that deed recorded in Book 3502, Page 484 of the Brunswick County Registry; and therefore, the Association has full control over the governance of Oak Harbour;

WHEREAS, the Association has determined that it is in the best interest of the Owners to subject Oak Harbour to Chapter 47F of the North Carolina General Statutes, which is commonly referred to as the North Carolina Planned Community Act, and to amend, consolidate and restate the Prior Declaration to update the governing documents and to clarify certain understandings of the Oak Harbour property owners;

WHEREAS, Chapter 47F of the North Carolina General Statutes, as amended, which is commonly referred to as the North Carolina Planned Community Act (the "Act"), provides that the Association may elect to make the provisions of the Act applicable to Oak Harbour with the approval of at least sixty-seven percent (67%) of the votes in the Association. The Act further provides that to the extent the procedures and requirements for amendments in the Prior Declaration conflict with the provisions of the Act, the provisions of the Act shall control with respect to any amendment to adopt the Act;



WHEREAS, pursuant to and in compliance with N.C.G.S. §§47F-1-102(d) and 55A-7-08, the election to subject Oak Harbour to the Act was proposed and, upon the same being submitted to a vote of the Owners, it was approved by the affirmative vote of Owners to which at least sixty-seven percent (67%) of votes in the Association are allocated;

WHEREAS, N.C.G.S. §47F-2-117, which applies to all planned communities created before January 1, 1999, provides that declarations may be amended with the approval of at least sixty-seven percent (67%) of the votes in the Association, or any larger majority that declaration specifies; and Section 25 of the Prior Declaration requires amendments to be approved by the Initial Developer and “seventy-five percent (75%) or more of the platted lots shown on the plot of Oak Harbour;”

WHEREAS, the “plot of Oak Harbour” was defined in the Prior Declaration as only that plat recorded in Map Book T, Page 259 of the Brunswick County Registry, which contained 14 lots; so using a standard of 75% or more of the 14 lots would result in a lesser majority than the statutory requirement of 67% of the 23 current votes in the Association; therefore the Association has determined that the correct and controlling requirement to approve the amendments to the Prior Declaration is the Act’s requirement of 67% of the votes in the Association;

WHEREAS, a separate approval by the Initial Developer of amendments to the Prior Declaration is not required since the Initial Developer no longer owns any Lots and the Association is now in full control of the governance of the Association;

WHEREAS, pursuant to and in compliance with N.C.G.S. §47F-2-117 and Section 25 of the Prior Declaration, the election to adopt and approve this Amended and Restated Declaration was proposed and, upon the same being submitted to a vote of the Owners, it was approved by the 19 affirmative votes out of the 23 total votes in the Association, which exceeded both a sixty-seven percent (67%) vote requirement and a seventy-five percent (75%) vote requirement;

NOW, THEREFORE, the Association hereby submits Oak Harbour, including all improvements, easements, rights, and appurtenances thereunto belonging, to the provisions of the North Carolina Planned Community Act and to the provisions of this Declaration; and hereby creates with respect to said Property a planned community to be known as “**OAK HARBOUR**”; the Association hereby amends, consolidates, restates, replaces and supersedes the Prior Declaration with this Amended and Restated Declaration of Covenants for Oak Harbour Subdivision; and hereby declares that Oak Harbour shall be held, sold, leased, used, occupied, improved and conveyed subject to the following covenants, conditions, restrictions, uses, limitations, and obligations, all of which shall be deemed to run with the real property subjected to the Declaration and shall be binding upon and inure to the benefit of all parties having any right, title or interest in said property, and their heirs, successor, and assigns.

#### **ARTICLE I** **Definitions**

The following words, when used in this Declaration or any supplement or amendment thereto, shall have the following meanings (unless the context shall prohibit):

1.1 Articles of Incorporation or Articles: the Articles of Incorporation of the Association, as filed with the North Carolina Secretary of State, and as may be amended from time to time.



1.2 Association: Oak Harbour Property Owners Association, Inc., a North Carolina non-profit corporation formed primarily as a property owners association for the Owners, all of whom shall be Members of the Association.

1.3 Board of Directors or Board: whether composed of one or more directors, the board governing the Association and managing the affairs of the Association.

1.4 Bylaws: the Bylaws of the Association, as they may be modified or amended from time to time.

1.5 Common Area: all real and personal property and facilities owned or enjoyed by the Association, other than a Lot, which Common Areas are specifically described in **Exhibit B** attached hereto.

1.6 Common Expenses: the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots, together with any allocations to reserves, and the actual and estimated expenses of maintaining and operating the Common Area.

1.7 Declaration: shall mean this Amended and Restated Declaration of Covenants for Oak Harbour, as the same may be amended or supplemented from time to time in accordance with the terms herein.

1.8 Design Guidelines: the guidelines and standards for architectural design and procedures set forth in Article 10 and applicable to all Lots within the Property, as said guidelines and standards may be amended from time to time. The initial Design Guidelines shall be prepared by the Board, and thereafter, the Association may amend the Design Guidelines if Owners to which at least sixty-seven percent (67%) of votes in the Association are allocated agree. The Association shall make the Design Guidelines available to Owners but shall not be required to record the same.

1.9 Future Development Property: the land shown as Lots 22, 24, 25 and 26 in Oak Harbour, Phase 3 as shown on Map Book 80, Page 94 of the Brunswick County Registry, which land does not currently qualify as a "Lot" or "Lots" under Section 1.11 of the Declaration as it does not meet all governmental regulations for one or more subdivided lots which may be independently owned and conveyed for development, use, and occupancy as an attached or detached residences for single families. The Future Development Property is further discussed in Section 3.2 and Section 13.4.

1.10 Governing Documents: the following documents, as they may be amended or modified from time to time: the Declaration, the Articles of Incorporation and Bylaws of the Association, any Rules and Regulations adopted by the Association; Board resolutions; and recorded plats of Oak Harbour.

1.11 Lot: any numbered plot of land appearing on a recorded plat of Oak Harbour, which is legally subdivided and meets all governmental regulations for a subdivided lot which may be independently owned and conveyed and which is or may be developed, used, and occupied as an attached or detached residence for a single family, with all necessary infrastructure and utilities. The Lots in Oak Harbour are more specifically described on plats shown in **Exhibit A**, attached hereto and



incorporated herein by reference. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon. The Future Development Property is not considered a Lot unless and until it meets all governmental regulations as described in Section 1.9 and Section 13.4.

1.12 Member: a Person who is entitled to membership in the Association, as provided in Section 3.2.

1.13 Oak Harbour: the real property described in **Exhibit A** attached hereto and incorporated herein by reference that has been submitted to the provisions of this Declaration.

1.14 Owner: the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.15 "Person": a natural person, a corporation, a partnership or limited partnership, a limited liability company or partnership, a trustee, association, or any other legal entity.

1.16 Planned Community Act or Act: the North Carolina Planned Community Act (N.C.G.S. §47F-1-101 et seq.), as the same may be amended from time to time.

1.17 Rules and Regulations: the rules and regulations adopted by the Board governing land use, individual conduct and uses or actions upon Oak Harbour, as the same may be amended or supplemented from time to time.

**ARTICLE 2**  
**Property Rights**

2.1 Rights of Owners. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, and for ingress and egress to and from the Common Area, which shall be appurtenant to and pass with the title to every Lot, subject to the following provisions:

- (a) The Governing Documents;
- (b) Any restrictions or limitations contained in any deed or other instrument conveying any portion of the Common Area to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area and improvements thereon, including rules restricting use of the recreational facilities within the Common Area to Owners and occupants of Lots and their guests, and rules limiting the number of guests who may use the Common Area; and the right of the Board to establish penalties for any infractions thereof;
- (d) The right of the Board to impose reasonable charges and fines for late payment of assessments; and after notice and opportunity for a hearing, to suspend the voting rights and the right to use the Common Areas and the recreational facilities within the Common Area by an Owner as more particularly described in this Declaration;



(f) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth herein and the rights of such Mortgagees in said Property shall be subordinate to the rights of the Owners hereunder; and

(g) Easements as provided in ARTICLE 10.

### **ARTICLE 3** **The Association**

3.1 Function of Association. The Association shall be the entity responsible for the management, maintenance, ownership, operation and control of the Common Area within Oak Harbour. The Association shall be the primary entity responsible for enforcement of the Declaration and such reasonable rules regulating use of the Common Areas and the use of Oak Harbour as the Board may adopt. The Board of the Association shall also be responsible for administering and enforcing the Design Guidelines and controls set forth in this Declaration. The Association shall perform its functions in accordance with the Governing Documents, the Planned Community Act and other applicable North Carolina law.

3.2 Membership. Every Owner of a Lot shall be a Member of the Association. There shall be only one membership per Lot unless a Person owns more than one Lot, in which case there shall be only one membership for each Lot that contains a completed single family home entirely on that Lot. For illustrative purposes, if a Person owns one Lot without a completed home, that Person shall have one membership and one vote. If a Person owns two Lots, and only one of the Lots contains a completed home, then the Person shall have one membership and vote. If a person owns two Lots and each of the Lots contain completed homes, then the Person shall have two memberships and two votes. If a Person owns two Lots and one completed home is located on both of those Lots, then the Person shall only have one membership and one vote. If a Person combines two Lots into one Lot by recording a combination map or instrument, then the Person shall have one membership and one vote.

If a Lot is owned by more than one Person, all co-Owners shall share the privileges of the applicable membership. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association, provided that only one person (and such person's immediate family members with respect to membership rights other than voting) may be designated to act in such capacity for such an Owner at any particular time.

In addition to the above, there shall be one membership in the Association for the owner of the Future Development Property, as defined in Section 1.9. The owner of the Future Development Property shall have one vote in the Association as long as it (or any of its affiliated companies or relatives) owns any portion of the Future Development Property. In the event any portion of the Future Development Property qualifies as a "Lot" and is sold to an unrelated or unaffiliated third party, then the owner of that Lot or Lots shall be admitted as a Class "A" Member in the Association and shall be entitled to the same voting rights as any other Class "A" Member, provided that the owner of the remaining Future Development Property (if any) would retain its one vote so long as it owns such property.

3.3 Voting. The Association shall have two classes of membership. The Class "A" Members shall consist of all Owners of Lots in Oak Harbour. Class "A" Members shall have one vote for each Lot in which they hold the interest required for membership under Section 3.2 (i.e., one vote per Lot unless a Member owns more than one Lot, in which case there shall be one vote for each Lot that contains a completed single family home entirely on that Lot). In any situation in which a Member is entitled personally to exercise the vote for his or her Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such Co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it. Class "B" shall consist of the owner of the Future Development Property, who shall have one vote and one vote only. Class "B" shall cease to exist upon full divestiture by the Class "B" Member and any related or affiliated persons or entities of all of the Property comprising the Future Development Property.

**ARTICLE 4**  
**Rights and Obligations of the Association**

- 4.1 Rights. The Association shall have the following rights to:
- a. Adopt and amend Bylaws and Rules and Regulations;
  - b. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses from Owners;
  - c. Hire and discharge managing agents and other employees, agents, and independent contractors;
  - d. Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community, subject however to the provisions of the Bylaws;
  - e. Make contracts and incur liabilities;
  - f. Regulate the use, maintenance, repair, replacement and modification of the Common Area;
  - g. Cause additional improvements to be made as a part of the Common Area;
  - h. Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property, provided that Common Area may be conveyed or subjected to a security interest only pursuant to applicable law;
  - i. Grant easements, leases, licenses, and concessions through or over the Common Area;
  - j. Impose and receive any payments, fees, or charges for the use or operation of the Common Area and for services provided to Lot Owners (provided that no part of the Common Area may be leased or rented);

k. Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer;

l. After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to Lots) for reasonable periods for violations of the Declaration, Bylaws, and Rules and Regulations of the Association;

m. Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the Declaration or statements of unpaid assessments;

n. Provide for the indemnification of and maintain liability insurance for its officers, Board, directors, employees and agents;

o. Assign its right to future income, including the right to receive Common Expense assessments;

p. Exercise all other powers authorized under the Planned Community Act or that may be exercised in this State by legal entities of the same type as the Association;

q. Exercise any other powers necessary and proper for the governance and operation of the Association.

4.2 Common Area. The Association, subject to the rights of the Owners set forth in the Declaration, shall manage and control the Common Area and all improvements thereon (as defined in other sections herein including, without limitation, roads, road rights of way, recreation pathways, decks, docks, boardwalks, stormwater facilities, gazebos, lighting, community fencing, irrigation, furnishings, equipment, and common landscaped areas). The Association shall keep such areas and improvements in good repair and in a clean, attractive, and sanitary condition consistent with the Declaration.

4.3 Enforcement. Subject to the requirements of the Planned Community Act, the Association may impose sanctions for violations of any of the Governing Documents, including reasonable monetary fines, suspension of the right to vote, and/or suspension of the right to use any recreational facilities within the Common Area. In addition, the Association may exercise self-help to cure violations; and, after notice and an opportunity to be heard, may suspend any services it provides to the Owner of any Lot who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. The Board may assess the reasonable monetary fines authorized by this Section as an Individual Assessment authorized by Article 8 of the Declaration. The remedies set forth in this Section are cumulative and not exclusive.

4.4 Implied Rights; Board Authority. The Association may exercise any and all other rights or privileges given to it expressly by, the Declaration, the Bylaws, the Planned Community Act, or Chapter 55A of the North Carolina General Statutes, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically



provided in the Declaration, the Bylaws, or the Articles, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Indemnification. To the maximum extent allowed by North Carolina law, the Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board incumbent at the time of such settlement) to which he or she may be party by reason of being or having been an officer, director or committee member. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.6 Dedication of Common Areas. The Association may dedicate portions of the Common Areas to any local, state, or federal governmental entity, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association.

4.7 Management and Administration. The management and administration of the Common Areas shall be the sole right and responsibility of the Association. The management shall be carried out in accordance with the terms and conditions of the Governing Documents, but they may be delegated to a manager(s) or management service(s).

## **ARTICLE 5**

### **Maintenance, Repair and Replacement**

5.1 Responsibility of the Association. The Association will maintain, repair and replace all of the Common Area. The actual and estimated expenses of maintaining, operating, repairing, and replacing the Common Area, including insurance, reasonable reserves, and utilities, as the Board may find necessary and appropriate pursuant to the Declaration, for the benefit of the Common Area shall be assessed at a uniform rate to all Lots. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, invitees, or licenses, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

5.2 Responsibility of the Owner. Each Owner shall maintain his or her Lot and all structures, landscaping, and other improvements comprising the Lot in a manner consistent with the Governing Documents. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. All structures shall be kept neat and in good condition and repair. It shall be the responsibility of each Owner to maintain, in a manner consistent with the Declaration, any area lying between the boundary or Lot line of such Lot and the edge of the street pavement.

5.3 Association's Right to Maintain Lots. If an Owner of any Lot fails to maintain that Lot and the improvements thereon in accordance with this Article in a manner reasonably satisfactory to the Board, in its sole discretion, the Board shall give written notice to such Owner and, if the necessary maintenance is not completed within thirty (30) days, the Association shall have the right, through its agents, contractors, and employees to enter upon the Lot of the defaulting Owner and to repair, maintain and restore the Lot and the exterior of the building and other improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance or restoration shall immediately be deemed a Special Assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such



Owner and shall become a lien against such Lot enforceable in accordance with Article 8. In the event of an emergency (as so deemed by the Board in its reasonable discretion), the Association shall have the right, with or without prior notice to the Owner, to enter any Lot and improvements located thereon to make emergency repairs necessary for the proper maintenance and operation of Oak Harbour.

5.4 Roads and Streets. The roadways within Oak Harbour are currently private roads and not public roads. As provided in Section 11.5 herein, all of the Owners have easements in order to travel over and across these roadways. As private roads, and not public roads, the responsibility for maintenance of these roads will be upon the Owners through the Association and assessments. No representation is made that construction of these roadways is or will be sufficient to be included in the state secondary road system or that Brunswick County or the State of North Carolina would eventually assume maintenance of this roadway. Notwithstanding the foregoing, the Association reserves the right but not the obligation to dedicate any or all of the roads to Brunswick County or the State of North Carolina Department of Transportation.

## **ARTICLE 6**

### **Insurance**

6.1 Required Coverage. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as are reasonably available:

(a) Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(b) Commercial general liability insurance on the Common Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least One Million Dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage; provided, if additional coverage and higher limits are available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage;

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board’s business judgment, but not less than an amount equal to a minimum of one-quarter of the Annual Assessments



on all Lots, plus one-quarter of the reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(f) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

6.2 Premiums. Premiums for all insurance described above shall be Common Expense.

**ARTICLE 7**

**Subdivision and Combination**

No Lot or Lots shall be subdivided except to enlarge an adjoining Lot, but any Lot so enlarged cannot be improved with more than one single family dwelling. An Owner of a Lot and a portion or all of an adjoining or contiguous Lot or Lots may construct a dwelling or other structure permitted hereunder upon and across the dividing line of such adjoining and contiguous Lots(s). Lots may be combined or further subdivided, and boundary lines of Units may be changed, only by recording of a plat combining or resubdividing the parcel of property. Upon the recording of such a plat, ownership of adjacent Lots by the same Owner shall be treated as a single Lot for purposes of voting and assessment.

**ARTICLE 8**

**Assessments**

8.1 Creation of the Lien and Personal Obligation of Assessments. The Association is hereby authorized to levy assessments against each Lot that qualifies for a Membership (as Membership is defined in Section 3.2, i.e., (i.e., one assessment per Lot unless a Member owns more than one Lot, in which case there shall be one assessment only for each Lot that contains a completed single family home entirely on that Lot and no additional assessments for Lots that do not contain a completed home thereon; and one assessment for the Future Development Property or any portion thereof) which shall collectively be referred to in this Article 8 as an "Assessable Lot") for Association expenses as the Board may specifically authorize from time to time. Each Owner, by accepting a deed or by entering into a recorded contract of sale for any portion of Oak Harbour, is deemed to covenant and agree to pay the following assessments to the Association, as more specifically provided herein: (1) General Assessments to fund Common Expenses for the general benefit of all Lots within Oak Harbour, (2) Special Assessments, (3) Individual Assessments and (4) Service Assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Board (but not to exceed the highest interest rate allowed by North Carolina law), late charges, costs, fees, fines, reasonable attorney's fees shall be a charge on the Assessable Lot and shall be a continuing lien upon the all Lots, including but not limited to the Assessable Lots against which each assessment is made until paid. Each such assessment, together with interest, costs, late fees and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Assessable Lot at the time when the assessment fell due.

No Owner may exempt himself from liability for assessments, by non-use of Common Area, abandonment of his Lot, or any other means. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or

perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

8.2 General Assessments. The initial General Assessment, due and payable to the Association, shall be prorated and paid at the time of closing of the purchase of an Assessable Lot by an Owner, so that all payments thereafter shall be due on January 1 of each year or the due date(s) which may be set by the Board as is more fully set forth in Section 8.9. The General Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents in Oak Harbour; for the improvements and maintenance of the Common Area; for payment of deductibles and insurance premiums described in Article 6; the maintenance of reserves for the repair and replacement of improvements located on the Common Area and for such other purposes as the Board may determine; and to pay the taxes and other municipal charges or fees of the Common Area.

8.3 Computation of General Assessment; Budget.

a. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare and distribute to the Members in such manner as may be required by the Planned Community Act a budget covering the estimated Common Expenses during the coming year (including, without limitation, any contributions to be made any reserve funds as described in Section 8.4). The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against Assessable Lot, and the amount to be generated through the levy of all applicable assessments against Assessable Lots.

b. The General Assessments shall be levied at a uniform rate against all Assessable Lot and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. This Section 8.3 shall apply to the determination of all General Assessments for fiscal years beginning after the date of the recording of this Declaration.

c. The Board shall send a summary of the final budget, together with a notice of the amount of the General Assessments to be levied pursuant to such budget, to each Owner within thirty (30) days after the Board adopts such budget. With such summary, the Board shall provide to each Owner a written notice of the meeting of the Members at which the Member's ratification of the budget will be considered. Such notice shall include a statement that the budget may be ratified at such meeting without a quorum. The meeting of the Members to consider ratification of the budget shall be held not less than ten (10) nor more than sixty (60) days after the mailing of the summary and notice referenced in this paragraph. Notwithstanding any other provisions of the Governing Documents, there shall be no requirement that a quorum be present at such meeting. Notwithstanding any other provision of the Governing Documents, the proposed budget shall automatically be deemed ratified and become effective unless disapproved at such meeting by Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.



d. The Board may revise the budget and adjust the assessments from time to time during the year, subject to the notice requirements and the right of Members to disapprove the revised budget as set forth above.

8.4 Reserve Budget. The Board shall annually prepare a reserve budget and establish reserve funds from its General Assessments for (i) maintenance and replacement of capital improvements which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost, (ii) major rehabilitation or major repairs, (iii) emergency or other repairs required as a result of storm, fire, natural disaster or other casualty loss, and (iv) recurring periodic maintenance of the Common Area.

8.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. The Board may establish the amount of the Special Assessment if it is One Hundred Dollars (\$100.00) or less in any assessment year for each Member. Except as otherwise specifically provided herein, any Special Assessment greater than \$100.00 shall require the affirmative vote or written consent of Members representing at least 50% of the total Class "A" votes in the Association. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6 Individual Assessments.

a. The Board shall have the power to levy Individual Assessments against a particular Lot or Lots constituting less than all Lots within Oak Harbour, as follows:

(i) To cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, handyman service, pool cleaning, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(ii) To cover costs including overhead and administrative costs and reserves incurred for maintenance, repair and replacement of private roads, signs, mail boxes, fences and berms, if any, which are constructed for the benefit of certain specified Lots, as the same may be more specifically set forth in a Supplemental Declaration.

(iii) To cover costs incurred in bringing the Lot into compliance with the terms of this Declaration, including, without limitation, Article 14, any applicable Supplemental Declaration, the Articles, the Bylaws, Rules and Regulations or costs incurred as a consequence of the conduct of the Owner or occupant of the Lot, their lessees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying an Individual Assessment under this subsection (a).

8.7 Service Assessments. The Board shall have the power to levy Service Assessments against a particular Lot or Lots constituting less than all Lots within Oak Harbour to cover the costs, including overhead and administrative costs, of providing specialized maintenance and/or landscaping services to such Lot(s) and the occupants thereof. Such assessments may be levied in



advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner. Notwithstanding the foregoing, the fact that the Association levies a Service Assessment shall not be deemed to impose any obligation upon the Association to (i) monitor the quality of work or services being provided, (ii) assume any responsibility for the quality of work or services provided, (iii) ensure the structural integrity or soundness of any construction or modifications provided or (iv) ensure compliance with building codes and other governmental requirements relating to the work or services provided.

8.8 Due Dates. The due dates for General Assessments shall be established by the Board. The Board shall require the General Assessments to be paid at least annually, but may require the General Assessments to be paid more often. 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.

8.9 Lien for Assessments.

a. All assessments authorized in this Article, together with interest and expenses, including reasonable attorney's fees (as permitted by law) shall constitute a charge on and a continuing lien upon the Assessable Lot against which the assessment is levied, which lien shall be superior to all other liens and encumbrances on the Lot, except the liens of all ad valorem taxes or assessments and any other liens which by law would be superior. Such lien shall become effective when a notice thereof ("Claim of Lien") is filed of record in the Office of Clerk of Superior Court of Brunswick County, North Carolina, provided such Claim of Lien shall not be filed until such sums assessed remain unpaid for a period of more than thirty (30) days after the same shall become due. Such Claim of Lien shall also secure all assessments against the Assessable Lot becoming due thereafter until the lien has been satisfied.

b. In the event of any transfer of title to a Lot, the lien of the assessments shall not be extinguished nor shall the Lot be relieved from the lien for any subsequent assessments. Each assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage or any individual obtaining title by or through a foreclosure shall be personally liable for unpaid assessments which accrued prior to such acquisition of title.

8.10 Default in Payment of Assessments: Remedies of the Association.

a. Any assessments or portions thereof that are not paid when due shall be delinquent. If the assessment or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the due date at a rate set by the Board, not to exceed the maximum legal rate allowed in the State of North Carolina per annum, together with all expenses, including reasonable attorney's fees (if permitted by law), incurred by the Board in any proceeding brought to collect such unpaid Assessments; and in addition, a late fee shall be assessed in such amount as may be determined by the Board of Directors.

b. The Association may record notice of the claim of lien in the Office of the Clerk of Superior Court of Brunswick County, North Carolina and/or file a suit to collect such

delinquent assessments and charges. The Association may also file Notice of *Lis Pendens*, bring an action of law against the Owner personally obligated to pay the same; bring an action to foreclose the lien against the property, and utilize any other remedy provided under North Carolina law. In any event, a judgment, decree, or order in any action brought under this Article 8 shall include costs and reasonable attorney's fees for the prevailing party, subject to the limitations of N.C.G.S. §47F-3-116, and the same shall be added to the amount of any such assessment. The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. Provided however, no fewer than 15 days prior to filing the lien prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the Lot and the Lot Owner's address of record with the Association, and, if different, to the address for the Lot Owner shown on the county tax records and the county real property records for the lot. If the Lot Owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation.

8.11 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

8.12 Exempt Property. The following property shall be exempt from payment of General Assessments, Service Assessments and Special Assessments:

- a. Any Lots that does not qualifies for a Membership (as Membership is defined in Section 3.2) due to an Owner owning more than one Lot without completed homes located on each Lot;
- b. All Common Areas;
- c. Any property dedicated to and accepted by any governmental authority or public utility; and
- d. Any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Lot which is subject to assessment hereunder (in which case the Lot shall not be exempted from assessment).

8.13 Surplus Funds. Notwithstanding the provisions of N.C.G.S. §47F-3-114, any excess of Association income over Common Expenses (as defined in Article 1 and which shall include reasonable reserves) shall be applied to reserves or other future expenses as the Board deems appropriate.

## **ARTICLE 9**

### **Use Restrictions**

9.1 Use and Occupancy Restrictions. The following Use Restrictions apply to all Lots and to the Common Area:



a. Except as specifically set out in Section 9.2, each Lot is restricted to residential use as a single-family residence.

b. The use of Lots and Common Area is subject to any additional use restrictions set forth in the Bylaws and the Rules and Regulations. These use restrictions will have the same force and effect as the restrictions contained herein.

c. Each dwelling shall have a minimum of fifteen hundred (1500) square feet of enclosed, heated dwelling area for waterfront Lots, and fourteen hundred (1400) square feet for all other non-waterfront Lots, except that special architecture for twelve hundred (1200) square feet designs for adaptable Lots may be approved if the ARC, in its sole discretion, finds that 1200 square feet design will not adversely impact property values within Oak Harbour. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open/screened porches, and like areas.

d. No building or any type of structure (except drives and walks) shall be erected, placed or allowed closer than twenty-five feet from any street right of way or ten (10) feet to any other property line. In order to assure, however, that privacy, view, preservation of important trees and other vegetation, ecological and related 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 absolutely by the Architectural Control Committee, which Committee is authorized to grant variances on the setback lines based on the considerations mentioned in this subsection.

e. The exterior of all dwellings and other structures must be completed within **twelve (12) months** after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, due to strikes, fires, national emergency, natural calamities, or the complexity of design and construction.

f. All service utilities, fuel tanks, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the ARC so as to preclude the same from causing an unsightly view from any highway, street or way within Oak Harbour, or from any other residence within the design, placement, and materials of any fence must be approved by the ARC. Fences shall be permitted provided the design, placement, and materials of any fence are approved by the Architectural Control Committee. Fences shall not be permitted in front of any house or higher than six feet. Clotheslines are not permitted on any Lot.

9.2 Leasing. No Lot or any portion of a Lot may be leased or rented unless in accordance with Rules and Regulations adopted by the Association. **No Lot may be rented for a period of less than one (1) month.** All leases of a Lot or any portion of a Lot shall be deemed to include a provision that the tenant will recognize and abide by the Governing Documents, and that the Association has the power to enforce a violation of the provisions of the Governing Documents against the tenant and the Owner for any violation by such tenant. The Owner will be given a reasonable opportunity to cure any violation prior to the commencement of an enforcement action. The Association is not required to deal first with the tenant but may take all actions necessary under this provision directly with the Owner. The Owner shall be liable for any violation of the Governing Documents committed by the Owner's tenant, without prejudice to the Owner's right to collect any sums paid by the Owner on behalf of the tenant. Any lease of a Lot or a portion of the Lot must be in writing and all leases are subject to the requirements of the Governing Documents.



9.3 Commercial Use Prohibited. No Lot will be used for transient hotel, commercial or business purposes, except that the Owner of a Lot may maintain a home office which is merely incidental to the principal business activities of the Owner.

9.4 Offensive and Illegal Activities. No immoral, improper, offensive, noxious or unlawful use shall be made of any Lot or of the Common Area, and all applicable laws, zoning ordinances and regulations of all governmental authorities shall be observed. No Owner shall permit or allow anything to be done or kept in his Lot, or on the Common Area, which will increase the rate of insurance on the Lot, or which will obstruct or interfere with the rights of other occupants of the other Lots or annoy or embarrass them, nor shall any Owner undertake any use or practice which shall constitute a nuisance to any other Owner, or which interferes with the peaceful possession and proper use of any other Lot or the Common Area. No Owner and/or tenant shall play, operate, or permit to be played or operated, any musical instrument or electronic device in his Lot or on the Common Area in such a manner as to disturb or annoy other Owners.

9.5 Vehicles/Boats. No vehicle, boat, motor boat, personal water craft, camper, trailer, motor or mobile homes, tractor/trailer, construction equipment or similar type vehicle/equipment shall be parked on public or private streets or thoroughfares; provided however, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide services or to make a delivery to a Lot or the Common Area. No boat, motor boat, personal water craft, camper, trailer, motor or mobile homes, tractor/trailer, construction equipment or similar type vehicle/equipment, shall be permitted to remain visible on any Lot or on any street at any time, without the written consent of the Board of Directors. No inoperable vehicle or vehicle without current registration and insurance will be permitted on any Lot, street or Common Element. All lawn maintenance equipment shall be stored when not in use, in a method so as not to be visible from the street. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas and not visible from the street. The Association shall have the right to have all such vehicles, boats, or equipment parked, used or stored in violation of this section towed away or removed at the Owner's expense.

9.6 Structural Alterations and Exterior Appearance. No Owner shall permit any structural modification or alteration to be made to any Lot, nor alter or cause any changes to be made to or alter the appearance of the exterior of any building (including painting, installing television, satellite dish, radio antenna, or signs), without first complying with the provisions of Article 10. No Owner shall fix any object to the Common Area (including fences, flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the Common Area without first complying with the provisions of Article 10.

9.7 Signs. Except for the minimum number and size of political signs that may permitted by Brunswick County ordinances, no signs of any character shall be displayed or placed upon any Lot except such signs as may be reasonably necessary for sale purposes.

9.8 Stormwater Runoff Regulations. All Lots are subject to the State of North Carolina rules and regulations concerning stormwater runoff as these rules and regulations are amended from time to time. The State of North Carolina and Brunswick County, to the extent of their respective interests therein, are hereby made a beneficiary of this Declaration, to the extent necessary to enforce any stormwater runoff regulations as the same may be amended from time to time. Oak Harbour,



including the Common Area, is subject to the provisions of the Master Governing Documents concerning storm water management.

9.9 Removal of Nonconforming Condition. Any use, condition, structure or improvement placed, allowed to exist or made of or upon any Lot in violation of this Declaration after the date of recording of this Declaration, including but not limited to this Article 9, shall be deemed to be nonconforming. Upon written request from the Board, the Owner responsible for said nonconforming condition shall, at its own cost and expense, correct such nonconforming use, structure or improvement in accordance with the instructions of the Board. Should an Owner fail to act as required, the Board, or its designees shall have the right to enter the property and correct the nonconforming condition. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Owner of the Lot and collected as an Individual Assessment as provided in Article 8. All homes currently existing at Oak Harbour as of the recording of this Declaration are hereby deemed approved; provided however, any additions, modifications to such homes must comply with this Declaration, and provided that any other nonconforming improvements located upon any Lots (i.e., temporary sheds, etc.) shall be deemed nonconforming and are subject to enforcement as described herein.

9.10 Waterways. The canals and waterway shall not be used for any commercial purpose. Construction of any docks, boat slips, bulkheads, mooring, piling or any other constructions must be approved by the ARC as provided in Article 10. All docks currently existing at Oak Harbour as of the recording of this Declaration are hereby deemed approved. Shoreline contours may not be changed and no part of any bulkhead or seawall now existing on the waterfront of any lot shall be increased in height, except pursuant to a common plan approved in writing by the owners of a majority of the waterfront Lots.

9.11 Waterway Access and Common Area Dock. A walkway allowing for pedestrian access to the Intracoastal Waterway and Common Area dock is provided for all Owners with a pier extending outward approximately 100 feet into the waterway.

9.12 Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that domesticated dogs, domesticated 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, are at all times kept properly leashed or under the control of their owner and do not become a nuisance.

9.13 TV Satellite Dishes and Outside Antennas. No TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the ARC; provided, however, satellite dishes not over 18" in diameter which cannot be seen from the street are permitted.

## **ARTICLE 10** **Architectural Review**

An architectural review process is hereby established in accordance with this Article 10. The Board is authorized from time to time publish and promulgate architectural standards which shall be fair, reasonable and uniformly applied in regard to the Lots. These standards shall carry forward the spirit and intention of the covenants, conditions and restrictions of this Declaration.



10.1 Building Restrictions. No structures or buildings other than one (1) single family home shall be constructed on any Lot. No structures of a temporary character, such as a trailer, tent, shack, barn, shed or other outbuilding shall be constructed or used on any portion of Oak Harbour at any time. No heat pump, propane tank, hot tub pump or other similarly exposed mechanical equipment other than those originally installed by the original builder shall be placed on any Lot without the express approval of the Board. No window air conditioning unit shall be installed in any Lot.

No building, fence, wall or other structure shall be constructed, erected or maintained on, or removed from, Oak Harbour until the plans and specifications for such work have been approved by the Board as provided below. The plans and specifications (the "Plans") shall show the nature, kind, shape, height, materials and location of the proposed improvement. The Board shall review and approve or disapprove the plans as to harmony of external design, color and location in relation to surrounding structures and topography. The Board may also consider (but is not required to consider or limited to considering) the following: visual aesthetics, natural platforms and finish grade elevations, the suitability of the proposed building, improvements, structure, or landscaping and the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony of external design with surrounding structures and environment, the location in relation to surrounding structures and plant life, and the effect thereof on the adjacent or neighboring property. The Association shall have the right to charge a reasonable fee for reviewing each such application.

Upon receipt of a submission of said Plans, the Board shall advise the party submitting the same in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with this Declaration, the reasons for such finding, and suggestions for the curing of such objections. The Board shall use good faith, diligent efforts to respond to a Plan submittal within thirty (30) days after receipt of same, although matters not within the reasonable control of the Board may prevent this from occurring in certain cases. In the event the Board fails to advise the submitting party by written notice within sixty (60) days of either the approval or disapproval of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery. If construction does not commence on a project for which Plans have been approved within nine (9) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans for reconsideration.

10.2 Exterior Alterations. No Owner shall make structural alterations or exterior modifications to the improvements on his Lot or to any of the Common Areas, including but not limited to a change in exterior paint colors, the erection of awnings, the installation of storm doors, storm windows or window screens or the decoration of porches or balconies, without the written approval of the Board. The Board shall not approve any alterations or exterior modifications which, as determined by the Board in its reasonable judgment, would jeopardize or impair the soundness, safety or appearance of Oak Harbour.

10.3 Interior Alterations. Any Owner may remodel, paint, or redecorate the interior of structures on his Lot without approval of the Board. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.



10.4 Architectural Review Committee. The Board shall have the option, but not the obligation, to establish an Architectural Review Committee (the "ARC") to administer the architectural design standards and review process promulgated hereunder. If the Board elects to establish such an Architectural Review Committee, the Board shall establish guidelines regarding the operation and jurisdiction of such committee and shall appoint its members, each of whom shall serve and may be removed in the Board's discretion.

10.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board (or if applicable, the ARC) will change from time to time and that interpretation, application and enforcement of this Article may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

10.6 Variance. The Board (or if applicable, the ARC) may authorize in its discretion reasonable variances or adjustments from compliance with any of its guidelines and procedures in order to alleviate practical difficulties and hardship in their enforcement and operation. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing or (b) prevent the Board (or ARC) from denying a variance in other different or even identical circumstances. Any such variances shall not violate the spirit or the intent of this document to create a subdivision of Lots owned in fee by various persons with each such Owner having an easement upon areas owned by the Association.

10.7 Limitation of Liability. Neither the Association, the Board nor the ARC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board, nor the ARC shall be held liable for any injury, damages, or loss arising out of the review and approval of any application, including, but not limited to, the grant or denial of a variance, the manner or quality of construction, defects in any plans or specifications, or deficiencies in kind or quality of materials used, or for compliance or non-compliance with building codes and other governmental requirements.

**ARTICLE 11**  
**Easements**

11.1 Easement for Utility Installation.

a. All of Oak Harbour, including Lots and Common Area that do not include dwellings, shall be subject to a perpetual non-exclusive easement for water lines, sanitary sewers, storm drainage facilities, telephone and electric power lines, television antenna lines, and other public utilities within Oak Harbour whether the same be within the boundaries of any Lots(s).

b. Easements and rights of way over and upon the rear, front and side ten (10) feet of each Lot for drainage and the installation and maintenance of utilities and services, including, without limitation, water, sewer, drainage and stormwater runoff facilities, are reserved the Association and its successors and assigns for such purposes as the Association may deem incident and appropriate to its overall development plan. If the side setback is less than ten (10) feet, then the



reserved easement shall be the width of the setback. The easements and right of way areas reserved by the Association on each Lot pursuant hereto shall be maintained continuously by the Owner, but no structures or plantings or other material shall be placed or permitted or remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Improvements within such areas also shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

11.2 Easements for Cross-Drainage.

a. Every Lot and the Common Area shall be burdened with easements for drainage of water runoff from other portions of Oak Harbour; provided, no Owner shall alter the drainage on any Lot so as to materially increase the drainage of water onto adjacent portions of Oak Harbour without the consent of the Owner of the affected property.

b. Oak Harbour is burdened with a permanent easement for the benefit of the Association and its successors and assigns, for all stormwater runoff and drainage facilities located on or to be located in Oak Harbour, including, without limitation, any stormwater retention ponds or ditches. This easement includes the right to drill, install, locate, maintain and use pipes, conduits and pumps running to the stormwater retention ponds and other related facilities located in Oak Harbour.

11.3 Power to Grant Easements. Subject to the requirements of the Planned Community Act, the Association shall have the power and authority to grant and to establish in, over, upon and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the property.

11.4 Easement for Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance pursuant to Article 5 hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

11.5 Easements for Owner's Ingress and Egress. Every Owner, and his or her heirs, successors, assigns, guests and licensees, shall have a perpetual, non-exclusive easement and right of ingress and egress over and across any of the roads and sidewalks located or to be located within Oak Harbour, as shown on any recorded plats of Oak Harbour, for the respective purposes of providing vehicular and pedestrian access to and from Oak Harbour.

11.6 Easements for Maintenance by the Association. The Association, and its successors and assigns, hereby reserve the right to perform repairs and construction work, and to store materials in secure areas, on Lots and Common Area, and the further right to control all such work and repairs, and the right of access thereto, until its completion. 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 5 of the Declaration.

11.7 Easements Run with the Land. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on all 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 conveyance, or in any mortgage or trust deed or other evidence of obligation, to the benefit of and be binding on the undersigned, its successors and assigns, and any Owner, purchaser, Mortgagee and any 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 deed of trust or other evidence of obligation, to the easements and rights described in the Declaration.

**ARTICLE 12**  
**Compliance with the Governing Documents**

In the case of failure of an Owner or occupant to comply with the terms and provisions contained in the Governing Documents, the following relief shall be available:

12.1 Enforcement. The Association and any aggrieved Owner within Oak Harbour shall have the right to enforce by any proceeding at law or in equity, all of the conditions, covenants and restrictions of the Governing Documents and any and all laws hereinafter imposed pursuant to the terms of the Declaration. The prevailing party shall be entitled to collect all costs thereof, including reasonable attorney's fees (which shall be determined using reasonable hourly rates).

12.2 Remedies. The Association shall have the right to remedy the violation and assess the costs of remedying same against the offending Owner as an Individual Assessment as provided in Article 8 herein.

12.3 Suspension of Rights and Fines.

a. Suspension of Rights. For any violation by an Owner of the conditions, covenants and restrictions of this Declaration or any provisions of the other Governing Documents (including, but not limited to, the nonpayment of any assessment), the Association shall, after providing the Owner with any notice and any opportunity to be heard as may be provided in the Bylaws; have the right to suspend: (a) the offending Owner's voting rights, (b) the use by such Owner, his agents, lessees, employees, licensees and invitees of the Common Areas and recreational facilities within Oak Harbour, and (c) any other privileges or services provided by the Association for any period during which a violation continues.

b. Fines. For any violation by an Owner of the conditions, covenants and restrictions of this Declaration or any provisions of the other Governing Documents (including, but not limited to, the nonpayment of any general, special or individual assessment), the Association shall, after providing the Owner with any notice and any opportunity to be heard as may be provided in the Bylaws, have the right to impose reasonable fines for any period during which a violation continues. Notwithstanding the foregoing, the Association shall not be required to provide any Owner with notice and an opportunity to be heard in order to impose reasonable fines for the late payment or nonpayment of any assessment which has remained unpaid for a period of thirty (30)



days or longer. The Association may establish a schedule of fines for the violation of this Declaration or any provisions of the other Governing Documents. If an Owner does not pay the imposed fine within fifteen (15) days of its imposition, the fine shall be an Individual Assessment against the property and may be enforced by the Association in accordance with Article 8 herein and with applicable law.

12.4 Remedies Cumulative. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided in the Governing Documents and/or by law.

12.5 Waiver. The failure of the Association or any person or Owner to enforce any restriction contained in the Governing Documents shall not be deemed a waiver of the right to do so thereafter.

**ARTICLE 13**

**Duration, Amendment, Termination and Future Development Property**

13.1 Lots, Persons and Entities Subject to the Declaration. All present and future Owners, tenants, and occupants of Lots and their guests or invitees, licensees, employees or agents, shall be subject to, and shall comply with the covenants, conditions, restrictions and affirmative obligations set forth in 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 this Declaration are accepted and ratified by such Owner, tenant or occupant and that they will fully comply with the terms and conditions of said Declaration.

13.2 Duration and Termination. The covenants, conditions, restrictions, and affirmative obligations of the 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, for a term of twenty (20) years from the date the Declaration is recorded in the Brunswick County Registry, after which date the Declaration shall be extended automatically for successive periods of twenty (20) years, unless Owners representing eighty percent (80%) of the Class A votes in the Association agree to revoke the Declaration, in which case, for such revocation to be effective, an instrument must be recorded declaring the same at the Brunswick County Registry. The covenants, restrictions, conditions, and affirmative obligations of the Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any of Oak Harbour as though such provision were made a part of each and every deed of conveyance or lease.

13.3 Amendment. The Declaration may be amended if approved by Owners to which at least sixty-seven percent (67%) of votes in the Association are allocated, and an instrument must be recorded at the Brunswick County Registry for such an amendment to be effective. A certificate of the Secretary of the Association documenting votes held and voting rights exercised will be evidence of ownership and voting representation for the purposes of any such amendment.

13.4 Future Development Property. The properties shown as Lots 22, 24, 25 and 26 in Oak Harbour, Phase 3 as shown on Map Book 80, Page 94 of the Brunswick County Registry, do not currently qualify as a "Lot" or "Lots" under Section 1.10 of the Declaration as they do not meet all governmental regulations for one or more subdivided lots which may be independently owned and conveyed for development, use, and occupancy as an attached or detached residences for single families. Provided however, if any or all of those properties do later qualify as a "Lot" under Section 1.10 of the Declaration, and in the event the owner of such lot needs to use the roads in Oak Harbor



in order to access such lot, then it shall automatically be deemed to be a "Lot" hereunder, and the Board shall prepare and record a Supplemental Declaration reflecting such qualification which shall be signed by the President of the Association. In the event that the owner of such Lot does not and will not need to use the roads in Oak Harbor in order to access his/her Lot, then the Owner shall have the option of recording such Supplemental Declaration to deem the property as a Lot but shall not be required to do the same.

#### **ARTICLE 14** **General Provisions**

14.1 Captions and Construction. The captions contained in the Declaration are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Declaration or the intent of any provision thereof. In interpreting words in the Declaration, the singular will include the plural, the plural will include the singular, and the use of any gender will include all genders. Where there is more than one Owner of a Lot, said Owners are jointly and severally liable for the obligations herein imposed.

14.2 Common Area and Amenities. Unless otherwise provided in the Governing Documents, all of the Common Area and any other park, recreation area, recreation facility, dedicated access and other amenities appurtenant to the Subdivision, whether or not shown and delineated on any recorded plat of Oak Harbour, shall be considered private and for the sole and exclusive use of the Owners of Lots within Oak Harbour.

14.3 Waiver. No provision contained in the Governing Documents shall be deemed to be abrogated, abandoned, or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

14.4 Invalidity. The invalidity of any provision of the Governing Documents does not impair or affect in any manner the validity, enforceability or effect of the other provision, and in such event, all of the other provisions of the Governing Documents shall continue in full force and effect.

14.5 Conflict. The Governing Documents are intended to comply with the requirements of the Planned Community Act, except in the event that the Planned Community Act allows the Declaration to vary or to specify alternative provisions and in the event that this Declaration has varied or specified alternate provisions, in which case this Declaration shall control. Subject to the foregoing and to the extent any provision(s) of the Governing Documents are inconsistent with and cannot be reconciled with the terms of the Planned Community Act, the terms of the Planned Community Act shall be controlling with regard to such term. In the event of any conflict between this Declaration and any other Governing Document, this Declaration shall control.

14.6 Limitation of Liability. Neither the Association nor any officer or member of the Executive Board will be liable to any party for any act or for any failure to act with respect to any matter arising by, through, or under the Governing Documents, so long as the action or failure to act was made in good faith. The Association will indemnify all of the officers and the Board with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.

14.7 Governing Law. The laws of the State of North Carolina shall apply in interpreting the Governing Documents.



14.8 Exhibits. Any exhibit, schedule, or certification accompanying this Declaration or any other Governing Document is hereby made a part of that document and incorporated therein by reference.

- SIGNATURE PAGE FOLLOWS -



**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Oak Harbour Property Owners Association, Inc., a North Carolina non-profit corporation, and I certify to the following:

(1) That the election to subject Oak Harbour to the North Carolina Planned Community Act was approved by the affirmative vote of Owners to which at least sixty-seven percent (67%) of votes in the Association are allocated; and

(2) That the election to adopt and approve this Amended and Restated Declaration was approved by the affirmative vote of Owners to which at least seventy-five percent (75%) of votes in the Association are allocated.

OAK HARBOUR PROPERTY OWNERS  
ASSOCIATION, INC.

By: Angela Ruel  
Print Name: Angela Ruel  
Title: Secretary

STATE OF NORTH CAROLINA

COUNTY OF Brunswick  
(County where acknowledgment taken)

I, Angie Whalen, a Notary Public in and for Brunswick County, North Carolina, certify that Angela Ruel personally came before me this day and acknowledged that she is Secretary of OAK HARBOUR PROPERTY OWNERS ASSOCIATION, INC., a North Carolina non profit corporation, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Secretary.

WITNESS my hand and official seal this 5 day of February, 2016.

Angie Whalen  
Notary Public

My commission expires:

12/29/18

**ANGIE WHALEN**  
Notary Public  
Brunswick Co., North Carolina  
My Commission Expires Dec. 29, 2018



**EXHIBIT A**

**Oak Harbour**

BEING ALL of those certain tracts or parcel of land previously annexed to and made a part of Oak Harbour Subdivision as shown in Map Book T, Page 259; Map Book W, Page 291; Map Book 27, Page 117; Map Book 34, Page 19; Map Book 55, Page 99 of the Brunswick County Registry, which land consists of the following Oak Harbour Lots:

BEING all of Lots 1 and 2 in Oak Harbour, Phase 1 as shown on Map Book T, Page 259 of the Brunswick County Registry, which lots have been legally combined into one parcel or Lot by that Instrument of Combination recorded in Book 1102, Page 645, Brunswick County Registry;

BEING all of Lots 3, 4, 5, 6, 16, 18 and 19 in Oak Harbour, Phase 1 as shown on Map Book T, Page 259 of the Brunswick County Registry;

BEING all of Lots 20 and 21 in Oak Harbour, Phase 1 as shown on Map Book T, Page 259 of the Brunswick County Registry; which lots have been legally combined into one parcel or Lot by that deed recorded in Book 1938, Page 442 of the Brunswick County Registry;

BEING all of Lot 7, 7A, 8, 9, 13 and 13A in Oak Harbour as shown on Map Book W, Page 291 of the Brunswick County Registry;

BEING all of Lot 10 and 12 in Oak Harbour as shown on Map Book 27, Page 117 of the Brunswick County Registry;

BEING all of Lots 15 and 17 in Oak Harbour, Phase 1 as shown on Map Book 34, Page 19 of the Brunswick County Registry; and

BEING all of Lot 23 in Oak Harbour as shown on Map Book 55, Page 99 of the Brunswick County Registry.

LESS AND EXCEPTING, therefrom, the properties shown as Lots 22, 24, 25 and 26 in Oak Harbour, Phase 3 as shown on Map Book 80, Page 94 of the Brunswick County Registry, which properties do not currently qualify as "Lots" under Section 1.10 of the Declaration as they does not meet all governmental regulations for one or more subdivided lots which may be independently owned and conveyed for development, use, and occupancy as an attached or detached residences for single families. Provided however, if any or all of the properties do qualify as a "Lot" under Section 1.10 of the Declaration, then such property or properties shall automatically be deemed to be a "Lot" or "Lots" as more particularly provided in Section 13.4.



**EXHIBIT B**

**Oak Harbour Common Area**

BEING all of those roads, road rights of way, recreation pathways, walkways, docks, boardwalks, buffer areas, stormwater facilities, gazebos, lighting, community fencing, irrigation, furnishings, equipment, and common landscaped areas owned by the Association and included in the land shown on Map Book T, Page 259; Map Book W, Page 291; Book 27, Page 117; Map Book 34, Page 19; Map Book 55, Page 99; Map Book 80, Page 94 of the Brunswick County Registry.