

# Cape Colony Homeowners Association

CAPE COLONY

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## Covenants

### AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS *AMENDED DECLARATION*, made this 9<sup>th</sup> day of February, 2006 by CAPE COLONY ASSOCIATION INC., a North Carolina Corporation, hereafter referred to as "Declarant".

#### WITNESSETH:

WHEREAS, Declarant is the successor in interest to United Properties, which was the owner of certain property located in Cape Colony Subdivision, Chowan County, North Carolina, known as Cape Colony Association, Inc. (hereinafter "Subdivision") which property is more properly described hereinafter; and

WHEREAS, United Properties sold or otherwise conveyed building and mobile home lots located in Cape Colony Subdivision subject to certain Declarations of Restrictive Covenants, the plats for which lots, together with the applicable Declaration of Restrictive Covenants are recorded in the Chowan County Registry as follows:

<b>Section Designator</b>	<b>Block/Lot Numbers</b>	<b>Plat Recorded Book/Page/Date</b>	<b>Deed Recorded Book/Page/Date</b>
Section One, Part One	Lots 1 - 66 inclusive	Plat Book 3, page 73 May 6, 1963	Book 19, page 319-320 June 12, 1964
Surfside Section One	Block 100 ? 107 inclusive	Plat Book 4, page 36 October 12, 1964	Book 19, page 548-549 October 12, 1964
Surfside Section One	Block 108, Lots 1 - 8 Lots 13 - 23 inclusive	Plat Book 4, page 85 May 27, 1967	Book 19, page 548-549 October 12, 1964
Surfside Section One	Block 109 Lots 1 - 24 inclusive	Plat Book 7, page 34 July 27, 1973	Book 20, page 56-57 November 12, 1964
Surfside Section One	Block 110 Lots 1 - 12 inclusive	Plat Book 4, page 37 November 12, 1964	Book 20, page 56-57 November 12, 1964
	Block 111 Lots 1-15 inclusive	Plat Book 5, page 81 September 14, 1968	Book 19, page 548/549 October 12, 1964
Surfside Section	Block 220 ? 224	Plat Book 4, page 53	Book 20, page 458-459

Two	inclusive	June 28, 1965	July 20, 1965
Surfside Section Three	Block 301 Lots 1 - 10 inclusive	Plat Book 5, page 12 December 21, 1966	Book 21, page 41-42 October 13, 1965
Surfside Section Three	Block 301A Lot 1A	Plat Book 4, Page 54 October 31, 1967	Book 21, page 41-42 October 13, 1965
Surfside Section Three	Block 302 Lots 1 - 20 inclusive	Plat Book 4, page 95 June 30, 1966	Book 21, page 41-42 October 13, 1965
Surfside Section Three	Block 303 Lots 1 - 20 inclusive	Plat Book 5, page 17 February 20, 1967	Book 23, page 17-18 February 27, 1967
Surfside Section Three	Block 304 Lots 1 - 37 inclusive	Plat Book 5, page 17 February 20, 1967	Book 23, page 17-18 February 27, 1967
<b>Section Designator</b> (cont?d)	<b>Block/Lot Numbers</b> (cont?d)	<b>Plat Recorded Book/Page/Date</b> (cont?d)	<b>Deed Recorded Book/Page/Date</b> (cont?d)
Surfside Section Three	Block 305 Lots 1 - 49 inclusive	Plat Book 4, page 95 June 30, 1966	Book 21, page 41-42 October 13, 1965
Surfside Section Three	Block 306 Lots 1 - 66 inclusive	Plat Book 5, page 12 ? 13 December 21, 1966 Plat Book 5, page 18 February 20, 1967	Book 23, page 23-24 February 27, 1967
Surfside Section Three	Block 307 Lots 1 - 24 inclusive	Plat Book 5, page 13 December 21, 1966	Book 23, page 21-22 February 27, 1967
Surfside Section Three	Block 308 Lots 1 - 27 inclusive	Plat Book 5, page 13 December 21, 1966	Book 23, page 21-22 February 27, 1967
Surfside Section Three	Block 309 Lots 1 - 61 inclusive	Plat Book 5, page 13 December 21, 1966	Book 23, page 21-22 February 27, 1967
Surfside Section Three	Block 310 Lots 1 - 76 inclusive	Plat Book 5, page 17 ? 18 February 20, 1967	Book 23, page 17-18; 23-24 February 27, 1967
Surfside Section Three	Block 311 Lots 1 - 87 inclusive	Plat Book 5, page 17 - 18 February 20, 1967	Book 23, page 17-18; 23-24 February 27, 1967
Surfside Section Three	Block 312 Lots 1 - 18 inclusive	Plat Book 5, page 18 February 20, 1967	Book 23, page 23-24 February 27, 1967
Surfside Section Three	Block 313 Lots 1 - 24 inclusive	Plat Book 5, page 18 February 20, 1967	Book 23, page 23-24 February 27, 1967
Surfside Section Three	Block 314 Lots 1 - 24 inclusive	Plat Book 5, page 18 February 20, 1967	Book 23, page 23-24 February 27, 1967
Surfside Section Three	Block 315 Lots 8 - 40 inclusive	Plat Book 5, page 18 February 20, 1967	Book 23, page 23-24 February 27, 1967
Surfside Section Three	Block 316 Lots 1 - 46 inclusive	Plat Book 5, pages 18 & 20 February 20, 1967	Book 23, page 17-18; 23-24 February 27, 1967
Surfside Section Three	Block 317 Lots 1 - 38 inclusive	Plat Book 5, page 20 February 20, 1967	Book 23, page 19-20 February 27, 1967
Surfside Section Three	Block 318 Lots 2 - 42 inclusive	Plat Book 4, page 95 June 30, 1966 Plat Book 5, page 13 December 21, 1966 Plat Book 5, page 18-19 February 20, 1967	Book 21, page 41-42 October 13, 1965 Book 23, page 21-22 February 17, 1967 Book 23, page 23-24 February 27, 1967

AND WHEREAS, in accordance with the provisions of the Declarations of Restrictive Covenants enumerated above, those Declarations can

be changed or modified in whole or in part by the recordation of an instrument signed by the owners of a majority of the lots in the Subdivision; and

WHEREAS, on \_\_\_\_\_, the Board of Directors of Cape Colony Association, Inc. proposed to amend said Declaration in manner and form as follows; and

WHEREAS, the Declarant and the owners of record of a majority of lots in the Subdivision, as evidenced by their signatures hereto, now deem it desirable to amend said Declarations and to rewrite the same as proposed and hereinafter set forth.

NOW, THEREFORE, Declarant, with the approval and consent of the owners of record of a majority of lots in the Subdivision as evidenced by their signatures hereto, hereby declares that this *AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS* supersedes the Declarations enumerated above and that all of the properties described above shall be held, sold, and conveyed subject to the following revised easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, said properties and be binding on all parties owning all or part thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. 'Association' shall mean and refer to CAPE COLONY ASSOCIATION, INC., its successors and assigns.

Section 2. 'Board' shall mean Board of Directors of the Association.

Section 3. 'Calendar Year' for annual assessments shall mean and refer to January 1<sup>st</sup> through December 31<sup>st</sup> of any calendar year.

Section 4. 'Common Area' shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area owned by the Association as of the effective date of this *Amended Declaration of Covenants, Conditions, and Restrictions* is described and shown on the Plats as follows:

Block 107	Boat Basin
Block 108	Clubhouse Area including parking lot
Block 108	Park and Swimming Area (including playground, bathhouses, fishing pier)
Block 110	Boat Ramp

All platted roads with the exception of those designated as NC State roads.

Section 5. 'Declarant' shall mean and refer to CAPE COLONY ASSOCIATION, INC., its successors and assigns.

Section 6. 'Easements' will be as required by the County/State ordinance(s) for the construction and perpetual maintenance of conduits, poles, wires, and fixtures for electricity, telephone service, water mains, sanitary and storm sewers, road drains, and other public and quasi-public utilities and to trim any trees which at any time may interfere or threaten to interfere with the maintenance of such lines, with right of ingress and egress from and across said premises to duly-authorized maintenance personnel. This easement shall also extend along any owner's side and rear property lines where fractional lots are owned. It shall not be considered a violation of the terms of this easement if wires or cables carried by pole lines pass over some portion of lots not within the easement, provided that such lines do not hinder the construction and maintenance of buildings situated on such lots.

Section 7. 'Effective Date' of this Declaration shall mean the date on which this Declaration is recorded with the Chowan County Registrar of Deeds.

Section 8. 'Lot' shall mean and refer to any plot of land shown upon any recorded Subdivision map of the Properties.

Section 9. 'Mobile Home' shall mean any structure which consists of a single unit completely assembled at the factory and is designed so that the total structure (not including double wides or triple wides) can be transported on its own chassis; and is over 32 feet in length and 8 feet in width; and is designed to be used as a dwelling and provides complete, independent living facilities inclusive of permanent provisions for living, sleeping, eating, cooking, and sanitation. Such units shall be considered a mobile home; regardless of the shape of the unit; whether or not the wheels have been removed, set on jacks, skirting, masonry blocks or other temporary or permanent facilities.

Section 10. 'Owner' or 'Lot Owner' shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. 'Properties' shall mean and refer to that certain real property located in Cape Colony Subdivision herein before described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 12. 'Residential Building' shall mean a permanent dwelling unit erected or placed on any Lot and constructed of material of good

grade, quality and appearance to include natural wood, stone, brick, concrete block, aluminum and/or vinyl siding. The term 'Residential Building' shall include a manufactured or modular home consisting of two or more sections transported to the building site for final assembly on a permanent foundation, and which, when installed, shall have substantially the appearance of an on-site, conventionally built, single-family dwelling. A 'mobile home' as defined herein may not be converted to a residential building by joining it to another mobile home or by an alteration or addition of any kind.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easement 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 charge reasonable admission and other fees for the use of any recreational facility situated upon Common Area by guests of members or non-members, to include his tenants or contract purchasers who reside on the property, i.e., Associate Membership;
- (b) the right of the Association to suspend the voting rights and rights to use of the Common Areas and facilities by an owner for any period during which any assessment against his Lot(s) remains unpaid;
- (c) the right of the Association to suspend the right to use Common Area and facilities for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (d) the right of the Association to dedicate or transfer all or any 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 or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by a majority of the members has been recorded;

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family who reside on the property but said right of enjoyment shall be subject to the provisions herein above stated.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

Every owner of a Lot who 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 that is subject to assessment. An Owner shall be entitled to one (1) vote per Lot and Owners of multiple or fractional Lots shall have a number of votes equal to the number of Lots owned; PROVIDED, HOWEVER, the Owner of any Parcel granted reduced assessments in accordance with Article IV, Section 3(a) shall have only one (1) vote for the total Lots which make up the Parcel.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for affirmative enforcement of aesthetic deficiencies, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment 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 Assessment. The Assessments levied by the Association shall be used exclusively for the improvement and maintenance of the Common Area and to promote the health, safety, aesthetic integrity, recreation and welfare of the Owners. The assessments shall also be used for administration costs of the Association, attorney fees and for the purchase of property and casualty insurance on the Common Area and for the purchase of such other insurance as may be necessary for the purpose of protecting the Association, its employees, directors, and officers.

Section 3. Maximum Annual Assessment. Subject to the following, until January 1 of the year immediately following the effective date of this *Amended Declaration of Covenants, Conditions, and Restrictions* the maximum annual assessment billed shall be in the amount of \$20.00 per lot.

- (a) From and after January 1 of the year immediately following the effective date of this *Amended Declaration*, the maximum annual assessment may be increased each year by not more than five percent (5%) above the maximum assessment for the previous year (rounded to the nearest whole dollar) without a vote of the membership.
- (b) From and after January 1 of the year immediately following the effective date of this *Amended Declaration*, the maximum annual assessment may be increased above five percent (5%) by a vote of the majority of the members who are voting in person or by absentee ballot, at a meeting duly called for this purpose.

- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.
- (d) A church owning a Lot or Lots used for a house of worship and contiguous parking lots may be exempted by the Association from the requirement to pay assessments.

Section 4. Assessment for specific repair and replacement including new construction within the Common Area. The Board of Directors may, as necessary, levy a specific additional assessment in order to provide for repair and replacement including new construction within the Common Area. Assessment for the aforementioned will be billed at the same time as the annual assessment (refer to Section 7 of this Article).

Section 5. Special Assessment for Affirmative Enforcement of Aesthetic Deficiency. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment against an individual Lot or Lots for the purpose of defraying, in whole or in part, the cost of aesthetic deficiencies pursuant to Section 2 of Article VI hereof.

Section 6. Notice of Quorum for Any Action Authorized under Sections 3, 4, and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3, 4, or 5 shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. A quorum conforming to The Corporation Laws of North Carolina, Section 55A-33 is required to take any action authorized under Sections 3, 4, and 5 of this article.

Section 7. Annual Assessment Due Dates. The Board of Directors shall fix the amounts of the annual assessment, for the period January 1<sup>st</sup> through December 31<sup>st</sup>, against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The annual assessments will be due and payable on January 1<sup>st</sup> of each calendar year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessment: 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 rate of 6 percent (6%) per annum and such delinquent assessment together with said interest, costs of collection, court costs, and reasonable attorneys' fees shall constitute a lien against the Lot upon which such assessment is levied. The Association may record notice of same in the Office of the Clerk of Superior Court of Chowan County or file a suit to collect such delinquent assessments and charges. The Association may file Notice of Lis Pendens, which brings an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any valid recorded 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 proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE V

### ASSOCIATION MANAGEMENT

The management of the Association shall be conducted by a Board of Directors, acting for the Association, in accordance with Bylaws of the Association and its Articles of Incorporation. Members of the Board of Directors shall be elected and amendments to the Bylaws shall be determined by majority vote of members, whose assessments are paid to date, voting in person, by absentee ballot, or by proxy. In the event that Bylaws of the Association or its Articles of Incorporation conflict with provisions of this *Amended Declaration*, this *Amended Declaration* shall govern.

The Common Area(s), as described in Article II, Section 4 herein, are to be managed/operated as follows:

Boat Basin - Due to the limited number of slips, the boat basin will be operated as a self-supporting Common Area. It will be maintained with funds that are generated by boat slip rental(s) and any other funds assessed persons that are renting slip(s). No Common Area funds will be used to maintain the boat basin. The boat basin will be managed/operated utilizing one of the following options:

- A Committee composed of members in good standing, who are renting slips, will be appointed by the Board and will be responsible for renting slips, collecting fees, maintenance and repair, and other problems as they occur. Said Committee will establish/publish rules and guidelines for operation of the boat basin. All financial functions will be coordinated with the Board and the Association's bank account will be used for all receipts/expenditures.
- The boat basin may be leased, for a nominal fee, to a member/members in good standing who is/are renting slip(s). The leasee(s) will be responsible for renting slips, collecting fees, maintenance and repair, and other problems that may exist. The leasee(s) will establish/publish rules and guidelines for operation of the boat basin. The leasee(s) will establish a separate bank account and provide reports of financial status to the Board every ninety (90) days.
- A maintenance/upkeep contract may be entered into between the Board and a member/members in good standing who is/are renting slip(s). The contractee(s) will be responsible for renting slips, collecting fees, maintenance and repair, and other problems that may exist. The contractee(s) will establish/publish rules and guidelines for operation of the boat basin. The contractee(s) will establish a separate bank

account and provide reports of financial status to the Board every ninety (90) days.

**Boat Ramp** - The boat ramp will normally be operated as a Common Area supported by Common Area monies. At the Board's discretion, the boat ramp may be operated as a self-supporting Common Area. If so deemed, it will be maintained by funds generated by assessing a user fee to be paid by those members in good standing who wish to use the boat ramp. No Common Area funds would then be used to maintain the boat ramp. The boat ramp would be managed/operated utilizing one of the following options:

- A Committee composed of members in good standing will be appointed by the Board and will be responsible for collecting fees, maintenance and repair, and other problems as they occur. Said Committee will establish/publish rules and guidelines for operation of the boat ramp. All financial functions will be coordinated with the Board and the Association's bank account will be used for all receipts/expenditures.
- The boat ramp may be leased, for a nominal fee, to a member/members in good standing. The leasee(s) will be responsible for collecting fees, maintenance and repair, and other problems that may exist. The leasee(s) will establish/publish rules and guidelines for operation of the boat ramp. The leasee(s) will establish a separate bank account and provide reports of financial status to the Board every ninety (90) days.
- A maintenance/upkeep contract may be entered into between the Board and a member/members in good standing. The contractee(s) will be responsible for collecting fees, maintenance and repair, and other problems that may exist. The contractee(s) will establish/publish rules and guidelines for operation of the boat ramp. The contractee(s) will establish a separate bank account and provide reports of financial status to the Board every ninety (90) days.

**Park** - The park will normally be operated as a Common Area supported by Common Area monies. At the Board's discretion, the park may be operated as a self-supporting Common Area. If so deemed, it will be maintained by funds generated by assessing a user fee to be paid by those members in good standing who wish to use the park. No Common Area funds would then be used to maintain the park. The park would be managed/operated utilizing one of the following options:

- A Committee composed of members in good standing will be appointed by the Board and will be responsible for collecting fees, maintenance and repair, and other problems as they occur. Said Committee will establish/publish rules and guidelines for operation of the park. All financial functions will be coordinated with the Board and the Association's bank account will be used for all receipts/expenditures.
- The park may be leased, for a nominal fee, to a member/members in good standing. The leasee(s) will be responsible for collecting fees, maintenance and repair, and other problems that may exist. The leasee(s) will establish/publish rules and guidelines for operation of the park. The leasee(s) will establish a separate bank account and provide reports of financial status to the Board every ninety (90) days.
- A maintenance/upkeep contract may be entered into between the Board and a member/members in good standing. The contractee(s) will be responsible for renting slips, collecting fees, maintenance and repair, and other problems that may exist. The contractee(s) will establish/publish rules and guidelines for operation of the park. The contractee(s) will establish a separate bank account and provide reports of financial status to the Board every ninety (90) days.

**Clubhouse Area** - The Clubhouse will be operated as a Common Area supported by Common Area monies.

## ARTICLE VI

### ARCHITECTURAL AND AESTHETIC CONTROL

**Section 1. Residential Lots.** All Lots as platted by United Properties, commonly referred to as Cape Colony, are classified as Residential Lots and those lots which serve exclusively as Common Area. All residential lots shall be subject to the following restrictions:

- (a) All residential buildings erected or maintained on any lot within this Subdivision must meet the requirements specified in **Addendum I**.
- (b) *Zoning Ordinance of County of Chowan, North Carolina, Article VIII, Table of Area, Yard, and Height Requirements* shall govern setbacks for all structures erected or maintained on any Lot within this Subdivision.
- (c) The placement or maintenance of Mobile Homes, regardless of size and facilities shall be prohibited on any Lot other than those designated as "trailer" Lots on the plat of record (reference **Addendum II**).
- (d) No structure, other than the primary residential dwelling, including trailers, shacks, campers, tents, or other out-buildings shall be occupied as a residence on any Residential Lot either temporarily or permanently. However, the Board of Directors of the Association or the Architectural Control Committee appointed by the Board, may grant permission for a temporary structure for storage use during construction and for a prescribed period of time to be determined by said Board or Committee, and provided further this restriction shall not preclude the parking of a camper, van, or like vehicle upon a Residential Lot so long as said vehicle is not used as a residence either temporarily or permanently.
- (e) No permanent building or structure shall be commenced, erected, or maintained upon any Residential Lot until the plans, specifications, and plot plan have been submitted to and approved in writing by the Board of Directors of the Association or the Architectural Control Committee 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.

- (f) No business, commercial or professional enterprise or activity, other than those specified by the *Zoning Ordinance of County of Chowan, North Carolina, Article 7, Section 7.01 Table of Permitted Uses and Section 7.02 Notes to the Table of Permitted Uses* shall be conducted upon any Lot.
- (g) Rental of Property (Lot/Residential Dwelling) which has not been utilized as rental property prior to the approval/adoption of these amended declarations of restrictive covenants and conditions will not be allowed.

#### Section 2. Aesthetic Control, All Lots.

- (a) In the event that the condition or appearance of any building, mobile home, recreation vehicle, trailer, boat or any other piece of real or personal property located on any Lot is such that, in the judgment of the Board of Directors of the Association adversely affects the property values, health or safety of persons in the Subdivision, the owner shall, upon written request by said Board of Directors, remove or repair the property within sixty (60) days of written notice.
- (b) Any building, mobile home, recreation facility, or other real or personal property which may be destroyed in whole or in part by fire, windstorm, or other cause must be rebuilt or all debris removed and the Lot restored to a slightly condition within no longer than three (3) months unless the written permission of the Board of Directors is obtained.
- (c) No nuisance or offensive, noisy or illegal activity shall be done, suffered, or permitted upon any Lot or the Common Area and no part of any Lot or Common Area shall be used or occupied to affect injuriously the use or value of other Lots or of the Subdivision. No outdoor toilet facilities or privies shall be permitted. Outside trash and garbage shall be maintained in sturdy containers, as inconspicuously as practical, and they shall be emptied regularly. No signs or advertising posters shall be permitted on any Lot, except signs identifying the residents or name of the property, 'For Sale' signs, or 'Yard Sale' signs which will be removed as soon as the sale has ended. No animals, livestock or poultry of any kind, other than customary household pets, shall be kept or maintained on any Lot. No junk, wreck(s), or inoperative automobile, truck, trailer, or boat shall be permitted to remain on the property, nor shall other unsightly materials be stored thereon.
- (d) Should the Board of Directors deem affirmative enforcement of the provisions of paragraphs (a), (b), or (c) above necessary, it shall appoint an Aesthetics Committee of not less than three (3) nor more than five (5) owners. Upon recommendation of the Aesthetics Committee that affirmative enforcement is necessary and upon concurrence by the Board of Directors, the Board of Directors shall notify the owner in writing of the aesthetic deficiency and the necessary corrective action. The owner shall correct the deficiency within sixty (60) days of receipt of the written notice. Upon failure of such owner to correct the deficiency within the sixty (60) day period, the Board of Directors or its authorized representative shall have the authority to enter onto the Lot in question and to correct the deficiency and thereafter to levy the cost of such corrective action as a special assessment against said Lot pursuant to Article IV, Section 5 hereof.

### **ARTICLE VII**

#### **ANIMAL CONTROL**

**Section 1. Household Pets.** Except for the maintenance of household pets such as dogs and cats, no animals, birds, fowl, livestock, poultry, or reptiles of any kind shall be kept on any Lot within the Subdivision. Household pets, such as dogs and cats, that are permitted to be maintained by a property owner, shall not be kept or maintained for commercial purposes, such as boarding or for breeding. Any owner of a pet who keeps or maintains a pet shall be deemed to have agreed to indemnify and to hold the Cape Colony Association, Inc. and each property owner free and harmless from any loss, claim, or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Subdivision.

**Section 2. Owner.** An owner is any person owning, keeping, having charge of, sheltering, feeding, or taking care of any household pets. The owner is responsible for the care, actions, and behavior of his/her household pet. Household pets outside of the owner's premises shall be on a leash and under the control of the owner or a responsible, designated member of the owner's family.

#### **Section 3. Animals That Are a Public Nuisance:**

- (a) No person owning a household pet shall permit his/her pet to create a public nuisance; that is, to permit the animal to:
- (1) repeatedly run at large chasing, snapping at, or attacking pedestrians, bicyclists, or vehicles;
  - (2) repeatedly damage the property of others;
  - (3) run at large during aroused stages of copulation;
  - (4) habitually or repeatedly make noises, sounds, barks, or other sounds (with provocation) that tend to annoy, disturb, or frighten the residents within the Subdivision.
- (b) It shall be a violation of these covenants for any owner to permit his/her animal to run at large when such an animal has been declared a public nuisance.
- (1) The owner shall keep such animal on his/her property at all times by means of a leash, cord, chain, or in a pen.
  - (2) The owner shall not permit such animal to leave the premises on which the animal is kept unless it is on a leash and in the care of a responsible, designated member of the owner's family.

#### **Section 4. Animals That Are Vicious**

- (a) A vicious animal is any animal that has:
  - (1) made an unprovoked attack on any human whether it is by biting or otherwise;
  - (2) in any manner, caused abrasions or cuts to the skin of a human;
  - (3) habitually or repeatedly attacked humans or other animals.
- (b) An animal that has been declared a vicious animal shall not be kept within the Subdivision.

Section 5. Dangerous Dogs. A dangerous dog is a dog that:

- (a) Without provocation, has killed or inflicted serious injury upon a person.
- (b) Has engaged in one or more of the following behaviors:
  - (1) inflicted a bite upon a person that resulted in broken bones, disfiguring lacerations or required cosmetic surgery or hospitalization;
  - (2) killed or inflicted serious injury upon a domestic animal when not on the owner's property;
  - (3) approached a person, when not on the owner's property, in a vicious or terrorizing manner in an apparent attitude of attack.
- (c) No dangerous dogs shall be maintained within the Subdivision.

Section 6. Violation of these Amended Declarations. The owner of a household pet who intentionally, knowingly, or willfully violates these *Amended Declarations* shall be liable for any injury to an individual and/or damage to another's property caused by his/her pet. The owner shall compensate any person hurt or bitten by any pet, and shall hold the Cape Colony Association, Inc. harmless from any claim resulting from any action of his/her pet.

Section 7. Pets Outside Premises. Any household pets outside the owner's premises shall be on a leash and under the control of a designated, responsible member of the owner's family.

Section 8. Other Provisions. The provisions of the Chowan County Animal Control Ordinance shall be enforced within the Subdivision.

## ARTICLE VIII

### NOISE CONTROL

It shall be unlawful to create or assist in creating any unreasonably loud, disturbing, and unnecessary noise within the subdivision. Noise of such character, intensity, and duration as to be detrimental to the public health, welfare, and peace is hereby prohibited.

The following acts, among others, are hereby declared to be loud, disturbing, and unnecessary noises in violation of this Article, but such enumeration shall not be deemed to be exclusive:

1. The sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound, or the sounding of such device for an unnecessary and unreasonable period of time, or the use of any gong or siren upon any vehicle, other than police fire, or other emergency vehicle;
2. The playing of any radio, phonograph, television, loudspeaker, amplifier or musical instrument in such manner or with such volume as to annoy or disturb the quiet, comfort, and repose of any person in any dwelling or other type of residence;
3. The keeping of any animal or bird which, by causing frequent or long continuous noise, shall disturb the comfort and repose of any person in the vicinity;
4. The use of any automobile, motorcycle, bicycle, skateboard, or other vehicle so out of repair, so loaded, or in such manner as to create loud or unnecessary grating, grinding, rattling, or other noise;
5. The sounding of any bell, gong, or any type horn or siren, attached to any building or premises which disturbs the quiet or repose of persons in the vicinity thereof;
6. The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced;
7. The shouting and crying of peddlers, barkers, hawkers, and vendors which disturb the quiet and peace of the neighborhood;
8. The use of any drum, loudspeaker, or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, sale, or display of merchandise;
9. The use of any mechanical loudspeaker or amplifiers on trucks or other moving vehicles for advertising purposes or other purposes except where specific license has been obtained; or
10. Shouting, fighting, or creating noise through loud or boisterous speech or singing so as to be audible off the premises upon which such activities and noise occur if so loud as to disturb the peace and tranquility of persons occupying any residences in the vicinity.

This Article shall not apply during any period directly after the announcement of any potential, impending disaster.

If any person shall violate the provisions of this Article, he/she may be subject to legal action.

The provisions of the Chowan County Noise Ordinance shall be enforced within the subdivision.

**ARTICLE IX**

**GENERAL PROVISIONS**

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one provision of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Duration and Amendment. The covenants and restrictions contained in the *Amended Declaration* shall run with and bind the land for a term of one (1) year from the date this *Amended Declaration* is recorded after which time, they shall automatically be extended for successive periods of one (1) year. This *Amended Declaration* may itself be amended in full or in part at any time by an instrument signed by the owners of record of the majority of Lots in the Subdivision.

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

CAPE COLONY ASSOCIATION, INC.

By: \_\_\_\_\_  
President

(CORPORATE SEAL)

ATTEST

\_\_\_\_\_  
Wendy L. Callahan, Secretary/Treasurer  
Cape Colony Association, Inc.

NORTH CAROLINA  
CHOWAN COUNTY

I, \_\_\_\_\_, Notary Public for said County and State, certify that Wendy L. Callahan personally appeared before me this day and acknowledged that she is Secretary/Treasurer of Cape Colony Association, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary/Treasurer.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Official Seal) \_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.

**ADDENDUM I**

**MINIMUM LIVING AREA STANDARDS**

**Minimum Living Area Standards:**

No dwelling shall be erected or placed on the following lots unless it conforms with the following minimum floor living area, excluding garage, carport, patio, or terrace.

<u>Section</u>	<u>Block</u>	<u>Lots</u>	<u>Minimum Square Footage</u>
Section One, Part One		1 through 7 or 8 inclusive	1,000 square feet
		8 or 9 through 19 inclusive	960 square feet
		35 through 42 inclusive	1,000 square feet
		43 through 52 inclusive	960 square feet
		20 through 34 inclusive	864 square feet
		53 through 66 inclusive	864 square feet
Surfside One	100	1 through 17 inclusive	560 square feet
	101	1 through 41 inclusive	560 square feet
	102	1 through 19 inclusive	560 square feet
	103	1 through 18 inclusive	560 square feet
	104	1 through 32 inclusive	560 square feet
	105	1 through 40 inclusive	560 square feet
	106	1 through 38 inclusive	560 square feet
	107	1 through 14 inclusive	560 square feet
	108	1 through 8 inclusive	560 square feet
	108	13 through 23 inclusive	560 square feet
	109	1 through 23 inclusive	560 square feet
110	1 through 12 inclusive	560 square feet	
Surfside Two	220	1 through 29 inclusive	560 square feet
	221	1 through 17 inclusive	560 square feet
	222	1 through 23 inclusive	560 square feet
	223	1 through 37 inclusive	560 square feet
	224	1 through 11 inclusive	1,050 square feet
	224	12 through 21 inclusive	560 square feet
Surfside Three	301	1 through 10 inclusive	560 square feet
	302	1 through 20 inclusive	560 square feet
	303	1 through 20 inclusive	560 square feet
	304	1 through 37 inclusive	560 square feet
	305	1 through 49 inclusive	560 square feet
	306	1 through 66 inclusive	560 square feet
	307	1 through 24 inclusive	560 square feet
	308	1 through 27 inclusive	560 square feet
	309	1 through 61 inclusive	560 square feet
	310	1 through 76 inclusive	560 square feet
	311	1 through 87 inclusive	560 square feet
	312	1 through 18 inclusive	560 square feet
	313	1 through 24 inclusive	560 square feet
	314	1 through 22 inclusive	560 square feet
	315	7 through 40 inclusive	560 square feet
	316	1 through 46 inclusive	560 square feet
	317	1 through 38 inclusive	560 square feet
	318	3 through 48 inclusive	1,050 square feet

## ADDENDUM II

### MOBILE HOMES ('TRAILER' LOTS)

#### Mobile Homes ('Trailer' Lots)

The owners of the following Lots shall be allowed to place a mobile home designed for single-family occupancy on said Lots. There shall be no more than one mobile home placed and occupied on said Lots as listed below.

<u>Section</u>	<u>Block</u>	<u>Lots</u>
Surfside One	109	All lots, 1 through 24 inclusive
	110	All lots, 1 through 12 inclusive
Surfside Three	301	All lots, 1 through 10 inclusive
	302	All lots, 1 through 20 inclusive
	303	All lots, 1 through 20 inclusive
	304	All lots, 1 through 37 inclusive
	305	All lots, 1 through 49 inclusive
	306	Lots 1 through 10 inclusive
	307	All lots, 1 through 24 inclusive
	308	All lots, 1 through 27 inclusive

309	All lots, 1 through 61 inclusive
310	Lots 1 through 37 inclusive
312	Lots 5 through 15 inclusive
313	Lots 8 through 15 inclusive
316	Lots 1 through 41 inclusive
All lots, 1 through 38 inclusive	

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