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Pender County North Carolina  
Sharon Lear Willoughby, Register of Deeds  
BK 4616 PG 930 - 960 (31)

STATE OF NORTH CAROLINA

COUNTY OF PENDER

PREPARED BY/RETURN TO:  
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WILMINGTON, NC 28403

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PELICAN SOUND**

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (“Declaration”), made the 28<sup>th</sup> day of January, 2016, by PELICAN SOUND HOMEOWNERS’ ASSOCIATION, INC., a North Carolina non-profit corporation, (hereinafter referred to as the “Association”) and PELICAN SOUND WATERFRONT RECREATIONAL FACILITIES OWNERS’ ASSOCIATION, INC., a North Carolina non-profit corporation, for the purposes hereinafter stated.

**WITNESSETH:**

WHEREAS, GSSC Properties, LLC previously recorded in the Pender County Registry the following instruments:

- (1) Declaration of Covenants, Conditions & Restrictions for Pelican Sound in Book 2694, at Page 151;
- (2) First Amendment to incorporate Section 2 of Pelican Sound in Book 2716 at Page 261;
- (3) Second Amendment to incorporate Section 3 of Pelican Sound in Book 2934 at Page 149; and
- (4) Third Amendment to incorporate the property described in Exhibit A of the Third Amendment in Book 3705 at Page 328

(collectively as amended and supplemented, the "Pelican Sound Declaration"), encumbering a portion of the Property, as defined herein, described as "Pelican Sound Property" on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, GSSC Properties, LLC recorded the Declaration of Covenants, Conditions and Restrictions for Pelican Sound Waterfront Recreational Facilities in Book 3134, at Page 328 in the office of the Register of Deeds of Pender County (as amended and supplemented, the "Pelican Sound Waterfront Declaration"), encumbering a portion of the Property, as defined herein, described as "Pelican Sound Waterfront Property" on Exhibit B attached hereto and incorporated herein by reference; and

WHEREAS, the Pelican Sound Declaration and the Pelican Sound Waterfront Declaration shall hereinafter be collectively referred to as the "Original Declarations"; and

WHEREAS, all owners of Pelican Sound Property were members of Pelican Sound Homeowners' Association, Inc., pursuant to the terms of the Pelican Sound Declaration; and

WHEREAS, all owners of Pelican Sound Waterfront Property were members of Pelican Sound Waterfront Recreational Facilities Owners' Association, Inc., pursuant to the terms of the Pelican Sound Waterfront Declaration; and

WHEREAS, the owners of lots in Pelican Sound Property to which at least eighty percent (80%) of the votes in Pelican Sound Homeowners' Association, Inc., were allocated and the owners of lots in Pelican Sound Waterfront Property to which at least eighty percent (80%) of the votes in Pelican Sound Waterfront Recreational Facilities Owners' Association, Inc., were allocated voted to approve the plan of merger which was adopted on October 6, 2015, ("Plan of Merger"); and

WHEREAS, pursuant to the Plan of Merger, Pelican Sound Homeowners' Association, Inc., and Pelican Sound Waterfront Recreational Facilities Owners' Association, Inc., shall merge and Pelican Sound Homeowners' Association, Inc., shall be the surviving corporation, all owners of Pelican Sound Property shall be members of the Association and all owners of Pelican Sound Waterfront Property shall be members of the Association, and the Original Declarations shall be amended and restated as set forth in this Declaration.

NOW, THEREFORE, the Association hereby covenants and declares on behalf of itself and its successors and assigns that the Original Declarations are hereby amended and restated in their entirety. The real estate previously made subject to the Original Declarations from the date this Declaration is recorded in the office of the Register of Deeds of Pender County shall be held, conveyed, acquired and encumbered subject to the terms and provisions hereof, all of which shall run with the real estate and bind and inure to the benefit of all current owners and perspective purchasers and parties who have or may acquire any right, title, estate or interest in or to any of such real estate or who have or may acquire any right or occupancy of or interest upon any portion thereof, all subject to the right of the Association to amend this Declaration according to its terms.

**ARTICLE 1: AMENDMENT AND RESTATEMENT OF ORIGINAL DECLARATION**

The Original Declarations are hereby amended to delete and rescind the Original Declarations in their entirety and adopt in their place instead this Declaration

**ARTICLE 2: ADOPTION OF THE NORTH CAROLINA PLANNED COMMUNITY ACT**

Chapter 47F of the North Carolina General Statutes, and any subsequent amendments thereto, which is commonly known as the North Carolina Planned Community Act, applies to the Association, the Property, the Lots and all other aspects of the planned community.

**ARTICLE 3: DEFINITIONS**

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

3.1 "Act" shall mean Chapter 47F of the General Statutes of North Carolina designated as the North Carolina Planned Community Act

3.2 "Articles" shall mean the Articles of Incorporation of Pelican Sound Homeowners' Association, Inc., as filed with the North Carolina Secretary of State.

3.3 "Assessments" shall mean the Annual, Special, Insurance, Ad Valorem and Working Capital Assessments defined herein.

3.4 "Association" shall mean and refer to PELICAN SOUND HOMEOWNERS' ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns, the owners association organized for the purposes set forth herein.

3.5 "Association Documents" shall mean, collectively, the Articles of Incorporation, the Bylaws, this Declaration, the Rules and Regulations, the Design Guidelines adopted by the Association, if any, the Community-Wide Standard adopted by the Board and the Architectural Committee, and any resolutions adopted by the Board, all as may be amended, restated and revised from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document

3.6 "Board of Directors" or "Board" shall mean the body responsible for administration of the Association selected as provided in the Bylaws.

3.7 "Boat" shall mean any boat or vessel moored at any Boat Slip.

3.8 "Boat Slip" shall mean possession of the space in and above the water for the docking of boats as diagrammatically shown on the Plat as recorded for Section 3 of Pelican Sound in Map Book 40 at Page 40 of the Pender County Registry and shall include any appurtenant hydraulic lift and power tower.

3.9 "Boat Slip Member/Owner(s)" shall mean and refer to every person or entity (whether one or more persons or entities) who has a Membership in the Association and to whom a Boat Slip has been assigned under Article 4.3 of this Declaration.

3.10 "Bylaws" shall mean the bylaws of the Association as they may be amended from time to time.

3.11 "Common Elements" shall mean all real and personal property in which the Association now or hereafter owns, leases or otherwise holds possessory or use rights for the common use and enjoyment of the Owners, including easements held by the Association for those purposes. The term shall include, without limitation, the Waterfront Recreational Facility, any other recreational facilities, signage, landscaping, lawns, drainage or other easements as the same may be depicted on recorded plats of the Property, as that term is defined herein, landscape medians, roads, alleys, cul-de-sacs, ponds, surface drain field, the infiltration basin, the grassed drainage swale easements and all other easements, and common element landscaping together with any irrigation system servicing the common elements, wetlands and preservation areas. The term shall also include any and all permits issued or transferred to the Association and other such intangible property. Notwithstanding this definition to the extent that the provisions of the Act apply to "Common Elements," including without limitation, the provisions of the N.C. Gen. Stat. §47F-3-112, those provisions shall only apply to Common Elements as defined in the Act.

3.12 "Common Expenses" shall mean any and all expenditures made by or financial liabilities and obligations of the Association, together with any allocations to reserves.

3.13 "Community-Wide Standard" shall mean the standard of conduct, upkeep, or other activity generally prevailing throughout the Property. The standard shall be determined by the Board of Directors and the Architectural Control Committee as defined herein. The standard may contain both objective and subjective elements, and may evolve and change as development progresses and as the needs and desires within the Property change.

3.14 "Declaration" shall mean this instrument and any exhibit, schedule or amendment thereto, all as may be amended, restated and revised from time to time.

3.15 "Design Guidelines" shall mean the architectural, design, development and other guidelines and procedures, including, but not limited to, the application and review procedure as provided herein and applicable to the Property.

3.16 "Development" shall mean the Property.

3.17. "Dwelling Unit" shall mean and building or structure or portion of a building or structure situated upon a Lot which is intended for use and occupancy as an attached or detached residence for a single family.

3.18. "Landscaping" shall mean living plants, shrubs, trees, vegetation, ground coverings (including grass and sod) and appurtenant live/growing vegetative materials, straw, mulches, composting materials, pools (other than swimming pools), ornamental ponds, ornamental structures and any other living or non-living material or structure reasonably constituting a part of any or all of the foregoing installed upon a Lot.

3.19. "Limited Common Element(s)" shall mean areas and facilities within any Lot which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration. There shall be no Limited Common Element on any Lot unless the same is specifically shown on the Subdivision Map for PELICAN SOUND other than the grassed drainage swales.

3.20. "Lot(s)" shall mean and refer to any numbered lot within the Development.

3.21. "Member(s)" shall mean and refer to every person or entity who has a Membership in the Association.

3.22. "Membership" shall mean and refer to the rights, privileges, benefits, duties and obligations, which shall inure to the benefit of and burden each Member of the Association.

3.23. "Mortgage" shall mean a mortgage, deed of trust or any other form of security instrument securing a lien against land.

3.24. "Mortgagee" shall mean a beneficiary or holder of a mortgage or deed of trust.

3.25. "Owner" shall mean and refer to 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.

3.26. "Permit(s)" shall mean North Carolina Stormwater Management Permit Number SW8 040320 issued for the Property, any CAMA permit applicable to the Property, and/or any wastewater system permit applicable to the Property, including, specifically, OSWS Project No. 2005-45-R.

3.27. "Person" shall mean a natural person, corporation, limited liability company, partnership, trust or any other legal entity.

3.28. "Property" shall mean the Property as defined in the preamble to this Declaration.

3.29. "Use Restrictions" shall mean the use restrictions which are defined in Article 11

herein.

3.30 "Waterfront Recreational Facility" shall mean any pier, dock, gazebo, beach or open space or the like adjacent to Topsail Sound maintained by the Association for the benefit of the Members.

#### ARTICLE 4: PROPERTY RIGHTS

4.1 Easements in Original Declaration. Notwithstanding the replacement of the Original Declarations with this Declaration, all easements created and described in the Original Declarations shall be easements appurtenant to, and shall run with, the land by whomsoever owned, whether or not the same shall be contained or referred to in any future deed or conveyance, and shall at all times inure to the benefit and be binding upon the Association and the Owners, all their grantees and their respective heirs, successors, personal representatives or assigns.

4.2 Common Elements. Every Owner shall have a right and nonexclusive easement, in common with all other Owners, of use, access, and enjoyment in and to the Common Elements, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association,
- (c) All applicable provisions of the Act including, but not limited to, the following:
  - (i) The right of the Board, to adopt rules, regulations or policies regulating the use and enjoyment of the Common Elements;
  - (ii) The right of the Association to dedicate or transfer all or any part of the Common Elements to governmental entities;
  - (iii) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred by the Association; and
  - (iv) The right of the Association to convey or encumber portions of the Common Elements as provided in the Act.
- (d) The right of the Board to suspend the privilege of an Owner to use the Common Elements.

4.3 Boat Slips. The following Lots shall have, as an appurtenance thereto, one Boat Slip at the Waterfront Recreational Facility: Lots 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of Pelican

Sound Subdivision as the same is shown on a map of said Subdivision recorded in Map Book 39 at Page 87 and Map Book 39 at Page 142 and Map Book 40 at Page 40, of the Pender County Registry, and as more particularly described on Exhibit C attached hereto and incorporated herein by reference. Such Boat Slip shall be appurtenant to and may not be separated from the ownership of the aforementioned lots. Every conveyance or transfer of the above lots, whether by deed, will, or inheritance shall be conclusively presumed to include the transfer of said Boat Slip which shall be appurtenant to said lot and whether or not reference to the transfer of such Boat Slip is contained in the deed, will or other monument of title transferring said lot. No conveyance or transfer of a Boat Slip which purports to separate ownership of said Boat Slip from one of the aforementioned lots shall be valid.

#### ARTICLE 5: EASEMENTS

5.1 Easements in Favor of the Association. The following easements are reserved to the Association, their successors and assigns:

(a) Easements as necessary in the lands constituting any part of the Common Elements for the installation and maintenance of utilities and drainage facilities; including the right of the Association to go upon the ground and improvements with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities ;the right to cut drain ways, swales and ditches for surface water; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil; and the right to install wells, pumping stations, and tanks. No structures or plantings or other material shall be placed or permitted or remain upon such easement 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.

(b) Easements over all access easements, and the Common Elements within the Development as necessary to provide access, ingress and egress, to any Additional Property.

(c) An easement of unobstructed access over, on, upon, through and across each Boat Slip at all reasonable times to perform any maintenance and repair to the Common Elements and Limited Common Elements.

5.2. Other Easements. The following easements are granted by the Association and Owners:

(a) An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Boat Slips and Common Elements and Limited Common Elements in the performance of their duties.

(b) In case of any emergency originating in or threatening any Boat or Boat Slip or Common Elements or Limited Common Elements, regardless of whether any Member is present

at the time of such emergency, the Association or any other person authorized by it, shall have the right to enter any Common Element, Limited Common Element, Boat or Boat Slip for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Members, and such right of entry shall be immediate. Such work shall be performed at the expense of the Member, if applicable, and in such event a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Owner or Boat Slip Owner as the case may be, including collection costs and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien against the membership shall be enforceable in the same manner as for the lien for Assessments.

(c) The Association is granted an easement over each Boat Slip for the purposes of providing maintenance when a Boat Slip Owner fails to provide maintenance and upkeep in accordance with this Declaration.

(d) The Boat Slip Owners shall have an easement over the Common Elements, walkways, piers, docks and other improvements of the Waterfront Recreational Facility to transport persons, materials and supplies to their Boat Slips in order to construct, maintain and repair hydraulic lifts, power towers, electrical and water systems, and other improvements approved by the Board of Directors at their Boat Slips.

(e) The Association reserves unto itself a perpetual, alienable and releasable easement and right of way on, over, under, through and upon each of Lots 1, 2, 3 as shown in Map Book 41 at Page 142 Pender County Registry and Lots 16, 17, 18, 19, 20 and 21 as shown in Map Book 40 at Page 40 Pender County Registry for the installation, inspection, repair and use of a modular recirculating media filter, pipes and other equipment associated with or related to the modular recirculating media filter located on the aforementioned Lots. Said easement is shown and indicated on the recorded subdivision plat and would include a circular easement twenty feet in diameter around the modular recirculating media filter as well as a ten foot access easement running from the adjoining street to the modular recirculating media filter for access, unless otherwise indicated on the recorded subdivision plat.

5.3. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Association, their successors and assigns, and any Member, purchaser, Mortgagee and other person having an interest in the Property, or any Additional Property, or any part or portion thereof.

## **ARTICLE 6: ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS**

6.1 Function of Association. The Association shall be the entity responsible for management, upkeep, operation and control of the Common Elements. The Association shall be the primary entity responsible for enforcement of the Association Documents. The Association shall have all powers reasonably necessary to perform its functions and obligations described in the Association Documents including, but not limited to, all powers set forth in Chapter 55A and the Act. Unless otherwise specifically provided in the Association Documents, all rights, powers, easements, obligations, and duties of the Association may be performed by the Board on behalf of

the Association and the Board shall have the authority to delegate to Persons of its choice such duties as may be determined by the Board to be expedient.

6.2 Membership. Every Owner shall be a Member of the Association. If a Lot is owned by more than one Person, all co-Owners shall be Members and share the privileges of such membership, subject to reasonable Board regulations, and the restrictions on voting set forth herein and in the Bylaws, and all such co-owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is a corporation, limited liability company, partnership or other legal entity may be exercised by any officer, director, manager, 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.

6.3 Voting. All Owners shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 6.2, provided, there shall be only one (1) vote per Lot. Except as otherwise specified in this Declaration or the Bylaws or as required by law, the vote for each Lot shall be exercised by the Owner. In any situation in which there is more than one (1) 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 notice to the Association, the Lot vote shall be suspended if more than one Person seeks to exercise it. If the co-Owners are unable to agree on how the vote should be cast, it will be disregarded.

#### **ARTICLE 7: ASSOCIATION RIGHTS, OBLIGATIONS AND SERVICES**

7.1 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property.

7.2 Implied Rights, Board Authority. The Association may exercise any right or privilege given to it expressly by the Association Documents or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in the Association Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

7.3 Dedication of Common Elements. The Association may dedicate or grant easements over portions of the Common Elements to any local, state, or federal governmental entity or any Utility Company.

7.4 Disclaimer of Liability. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote the health, safety and welfare of Owners and occupants of any Lot. Notwithstanding anything contained herein or in the Association Documents or the Act, neither the Association, the Board, nor the management company of the Association shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all

risks associated with the use and enjoyment of the Property.

7.5 Safety. The Association may maintain or support certain activities within the Property designed to provide a greater level of safety than exists within the Property. Neither the Association nor any management company of the Association shall in any way be considered insurers or guarantors of safety within the Property, nor shall they be held liable for any loss or damage for failure to provide adequate safety or ineffectiveness of safety measures undertaken.

7.6 Change of Use of Common Elements. Upon adoption of a resolution by the Board stating that, in the Board's opinion the present use of a designated part of the Common Elements is no longer in the best interest of the Owners or is no longer necessary or appropriate for the purposes intended, the Board shall have the power and right to change the use of any Common Elements (and, in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided that any such new use (i) shall be for the benefit of the Owners, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Elements.

7.7 View Impairment. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

7.8 Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Elements to, or transfer portions of the Common Elements to non-profit, tax-exempt organizations, including but not limited to organizations that provide facilities or services designed to meet the physical or social needs of a particular group or class of persons, for the benefit of the Property, the Association, its Members and residents.

7.9 Permits. The Association may coordinate and communicate with any governmental agency responsible for issuance of any Permit and may take any action or incur any expense reasonably necessary to insure compliance with any such Permit.

## ARTICLE 8. MAINTENANCE

8.1 Association's Responsibility. The Association shall provide upkeep for the Common Elements (with the exception of Limited Common Elements which shall be maintained pursuant to Section 8.2 herein), which shall include, but need not be limited to:

(a) all Common Elements and all improvements upon the Common Elements, including the Waterfront Recreational Facility;

(b) all Landscaping, signage, and improvements, including any entrances, structures, bike paths, pathways and trails, situated upon the Common Elements; provided, however, each Owner shall be responsible for the costs of irrigating that portion of the Common Elements, the irrigation of which is allocated to their Lot;

- (c) all private streets and alleys, including any asphalt repairs thereto, situated upon the Common Elements,
- (d) all walls and fences constructed as Common Elements,
- (e) Landscaping within any public utility easements and scenic or access easements within the Common Elements (subject to the terms of any easement agreement relating thereto).
- (f) the Sub-Surface Drain Field as shown on Map Book 40 at Page 40 of the Pender County Registry.

The Association may also maintain and improve other property which it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law.

Except as otherwise specifically provided herein, all costs for upkeep of the Common Elements shall be a Common Expense allocated among all Lots as part of an Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for, such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

8.2 Owner's Responsibility. Each Owner shall provide for the upkeep of his or her Lot, Dwelling Unit, Boat Slip and all other structures and other improvements upon the Lot, and all Limited Common Elements, including all improvements constructed thereon, allocated to his or her Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such responsibility for upkeep is otherwise assumed by or assigned to the Association. Each Owner shall also be responsible for maintaining the irrigation system allocated to his or her Lot, shall operate the irrigation system pursuant to the standards in the rules and regulations to assure the continuing good health and appearance of the grass and other Landscaping consistent with the Community Wide Standard, and shall be responsible for the costs of operating the irrigation system.

The maintenance expense of all components to the wastewater system located on an individual Lot which is dependent upon the wastewater system, said Lots being defined in Article 12.3, shall be the responsibility of the respective Lot Owner. Each Lot Owner which utilizes the wastewater system shall contribute pro rata to the Common Expense of the maintenance for the wastewater system located in the Common Elements. The Association shall determine the Common Expenses attributable to each Lot Owner with regard to the wastewater system as set forth herein.

The maintenance expense of the well used to provide water to the Boat Slips shall be the responsibility of the Boat Slip Owners. Each Boat Slip Owner shall contribute pro rata to the

Common Expense of the maintenance of the well. The Association shall determine the Common Expenses attributable to each Boat Slip Owner with regard to the well as set forth herein.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her upkeep responsibility, the Association may enter the Owner's Lot and perform such work for upkeep and assess all costs incurred by the Association against the Lot and the Owner in accordance with Declaration. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

8.3 Standard of Performance. Upkeep may include irrigation as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All upkeep shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, as determined by the Board.

Some portions of the Property may be environmentally sensitive and/or may provide greater aesthetic value than other portions of the Property. The Board may establish a higher Community-Wide Standard for such areas and require additional upkeep for such areas to reflect the nature of such property.

Notwithstanding anything to the contrary contained herein, neither the Association, nor any Owner shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

8.4 Maintenance of Boat Slips. A Boat Slip Owner shall be responsible for the maintenance, repair, upkeep, replacement, restoration, alteration, inspection, and reconstruction of its respective Boat Slip. In the event a Boat Slip Owner fails to maintain his Boat Slip, Boat, hydraulic lift or power tower in accordance with this Declaration or to take any other action required by this Declaration, then, after thirty (30) days notice from the Association, the Association or its designee may enter upon the Boat Slip, Boat, or other area and perform such maintenance or take such action at the expense of the Member, and such entry shall not be deemed a trespass, and in such event a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Boat Slip Owner, including collection costs and such amounts shall be due and payable within thirty (30) days after the Boat Slip Owner is billed therefor. Such lien shall be enforceable in the same manner as for the lien for Assessments. In the event that any maintenance activities are necessitated to any Common Elements by the willful act or active or passive negligence of any Boat Slip Owner, his family, guests, or invitees, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors of the Association, the cost of the same shall be the personal obligation of the Boat Slip Owner and if not paid to the Association upon demand, may be added to and become a part of the Annual Assessment levied against said Boat Slip Owner's Lot.

**ARTICLE 9: COVENANTS FOR ASSESSMENTS**

9.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed for the Owners' Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

- (a) Annual Assessments;
- (b) Special Assessments for Capital Improvements;
- (c) Insurance Assessments;
- (d) Ad Valorem Tax Assessments; and
- (e) Working Capital Assessments.

The 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 respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owners' successors in title unless expressly assumed by them.

9.2 Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property and Additional Property and for the improvement and maintenance of the Common Elements and any Limited Common Elements. The funds arising from said assessments or charges, may be used for any or all of the following purposes: operations, maintenance and improvement of the Common Elements, and any Limited Common Elements, including payment of utilities, enforcing this Declaration, paying taxes, insurance premiums, legal and accounting fees and governmental charges, establishing working capital, and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Elements and Limited Common Elements in good operating order and repair.

9.3 Annual Assessments. Annual Assessments shall be in an amount to be fixed from year to year by the Board of Directors which may establish different rates from year to year as it may deem necessary for the purposes set forth in Section 9.2 above. The amount of the Annual Assessment against each Lot for any given year shall be fixed at least 30 days in advance of the Annual Assessment period; provided, however, that the first Annual Assessment shall be set prior to the conveyance of the first Lot to an Owner and written notice to the Owners to be subjected thereto shall be delivered to the Owners at or prior to the closing of their Lots. Written notice of each Annual Assessment thereafter shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in lump sum or pro rata periodic installments, as the Board may

in its discretion determine. 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) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Annual Assessment may be increased each year not more than ten percent (10%) above the Annual Assessment for the previous year without a vote of the Members, except as herein provided.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Annual Assessment may be increased above ten percent (10%) by a vote of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may increase the amount of the Annual Assessment to \$1,000.00 per Lot notwithstanding the provisions of subparagraphs (a) and (b) above, and thereafter the limitations set forth in said subparagraphs shall apply to any annual increase.

9.4 Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements and any Limited Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

9.5 Insurance Assessment. All premiums on insurance policies purchased by the Board of Directors or its designee pursuant to this Declaration and any deductibles payable by the Association upon loss shall be a common expense. The Association may in any assessment year levy against the Owners equally an "Insurance Assessment" in addition to the Annual Assessments provided for herein, which shall be in an amount sufficient to pay the annual cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment. Such assessment shall not be subject to the 10% limitation as set out herein.

9.6 Ad Valorem Tax Assessments. All ad valorem taxes levied against the Common Elements, if any, shall be a common expense, and the Association may in any assessment year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments provided for under Section 3 above, which shall be in an amount sufficient to pay such ad valorem taxes in such year not included as a component of the Annual Assessment. Such assessment shall not be subject to the 10% limitation set out in Sections 9.3(a) and 9.3(b).

9.7 Notice and Quorum For Any Action Authorized under Sections 9.3 and 9.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies

entitled to cast fifty percent (50%) of all votes of each class of Membership shall constitute a quorum. The required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.8 Uniform Rate of Assessment. The Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

9.9 Effect of Nonpayment of Assessments and Remedies of the Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot in the same manner as a deed of trust under power of sale as allowed under North Carolina Law. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted.

9.10 Subordination Of The Lien To Mortgage. The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to 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 10: ARCHITECTURAL AND DESIGN STANDARDS**

10.1 General. No improvements (including staking, clearing, excavation, grading and other site work), exterior alteration of existing improvements (including painting), placement or posting of any object or thing on the exterior of any Lot, Dwelling Unit, other structure or the Common Elements (e g., signs, mailboxes, mailbox posts, accessory buildings, antennae, satellite dishes, clotheslines, playground equipment, temporarily or permanently installed basketball goals, pools, propane tanks, lighting, temporary structures, and artificial vegetation), planting or removal of Landscaping, or installation or removal of a well or an irrigation system shall take place except in compliance with this Article, this Declaration, including the Use Restrictions, and the Design Guidelines and with the approval described herein.

Any Owner may remodel, paint or redecorate the interior of structures including the Dwelling Unit on his or her Lot without approval. However, modification of the exterior and modifications to the interior of screened porches, patios, and similar portions of a Lot visible from other Lots, Dwelling Units, Common Elements or streets (public or private) within the Property shall be subject to this Article and approval as set forth below.

## 10.2 Architectural and Design Review.

(a) **New Construction.** The Board may create and appoint an Architectural Control Committee ("ACC"). The ACC shall consist of at least three (3), but not more than five (5), Persons, who must be Owners, who shall serve and may be removed in the Board's discretion.

(b) **Fees.** The ACC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

(c) **Security Deposit.** The ACC may require posting of a security deposit by an Owner to be utilized for the payment of any fines and costs of enforcement in accordance with Section 10.8, or the repair of any damage to any Common Elements, or providing upkeep of such Common Elements in excess of normal upkeep as may occur during construction on the Lot. The amount and type of security may be changed from time to time by the ACC.

10.3 Guidelines and Procedures. The ACC shall prepare Design Guidelines which shall apply to all construction activities within the Property, except as provided in Section 10.1. The ACC shall have authority to amend the Design Guidelines, with the Board's consent. Within thirty (30) days after the adoption of any amended Design Guidelines, the ACC shall provide a copy or summary of the amended Design Guidelines to all Owners.

The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, intended use, and any other applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ACC and compliance with the Design Guidelines does not guarantee approval of any application.

Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines. The ACC is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive, subject to the Board's consent.

The Association shall make the Design Guidelines available to Owners (including builders) and contractors who seek to engage in development or construction within the Property and all such Persons shall conduct their activities in accordance with such Design Guidelines.

All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the ACC, unless the ACC has granted a variance in writing pursuant to this Article. So long as the ACC has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

#### 10.4 Submission of Plans and Specifications.

(a) No activities within the scope of Section 10.1 shall commence on any Lot until an application for approval of the proposed work has been submitted to and approved by the ACC. Such application shall be in the form required by the ACC and shall include plans and specifications ("Plans") showing layout, size, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefore and other features of proposed construction, as applicable. The Plans shall also include all applicable permits and approvals and any other information requested by the ACC.

(b) In reviewing each submission, the ACC may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. The ACC shall also review the installation or modification of irrigation systems.

(c) The ACC shall, within thirty (30) days of receipt of the Plans, 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 and/or the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections. In the event the ACC fails to advise the submitting party by written notice within thirty (30) days of either the approval or disapproval and suggestions for curing the objections of the committee 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 to the submitting party.

(d) If construction does not commence on a project for which Plans have been approved within sixty (60) days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the ACC for reconsideration provided that the ACC may grant a longer time period for expiration of the approval at the time the approval is granted. If construction is not completed on a project for which plans have been approved within six (6) months or as otherwise set forth in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

#### 10.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of

the ACC will change from time to time and that interpretation, application and enforcement of the Design Guidelines 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 Variations. The ACC may authorize variations in writing from its guidelines and procedures, but only

- (a) in accordance with duly adopted rules and regulations,
- (b) when unique circumstances dictate such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and
- (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance.

10.7 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Association, the Board, nor the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, governmental requirements, and any other restrictions. Neither the Association, the Board, nor the ACC or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the ACC and their members shall be defended and indemnified by the Association as provided in the Bylaws.

10.8 Enforcement. Any construction, alteration or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the ACC or the Board, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the property, Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. In such event a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Owner, including collection costs and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien shall be enforceable in the same manner as for the lien for Assessments.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot,

unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Bylaws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof. In such event a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Owner, including collection costs and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien shall be enforceable in the same manner as for the lien for Assessments.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Property, subject to the notice and hearing procedures contained in the Declaration. In such event, the Association, its officers, or directors shall not be held liable to any Person for exercising the rights granted by this section. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ACC.

#### **ARTICLE 11: USE RESTRICTIONS**

11.1 Applicability Effect. The Property is subject to Design Guidelines as set forth in this Article and other restrictions governing land development, architectural and design control, individual conduct and uses of or actions upon the Property. This Declaration, including the Use Restrictions herein, and the rules and resolutions adopted by the Board or the Members establish affirmative and negative covenants, easements, and restrictions on the Property. All provisions of this Declaration and any rules shall apply to all Owners, their contractors, family members, occupants, tenants, guests and invitees of any Lot.

11.2 Authority to Promulgate Rules.

(a) Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may propose rules not inconsistent with the Use Restrictions set forth in this Article, and other such rules and regulations permitted by, and not inconsistent with, the Act, including such rules and regulations relating to the use of, and parking and traffic, on public and private streets located within the Property, provided, however, no rules shall become effective until approved by the membership as set forth in subsection (b) of this section.

(b) The Owners, at a meeting duly called for such purpose, shall vote to adopt rules which are proposed by the Board. The rules are successfully adopted by the affirmative vote of Owners representing a majority of votes in attendance (in person and by proxy) at such meeting.

(c) Once approved by the Owners the Board shall send a copy of the rule to

each Owner specifying the effective date of Owner approval. The Association shall provide, without cost, a copy of the rules then in effect to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Owners to modify, repeal or expand the Declaration, the Bylaws, the Articles, or the Design Guidelines. Such documents may be amended as provided therein.

11.3. Approval of Plans. No house plans will be approved unless the proposed house shall have a minimum of 2000 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" as used in the minimum requirements shall be 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 porches, and like areas.

(a) Since the establishment of inflexible building setback lines for location of houses on lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines shall be established by this Declaration, provided, however, all buildings must comply with any setbacks required by Pender County Zoning Regulations. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any lot shall be controlled by and must be approved absolutely by the Board, or the ACC, as the case may be.

(b) The exterior of all houses 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 or natural calamities.

(c) No structure shall be erected, altered, placed or permitted to remain on any Lot, except one single family dwelling not to exceed two and one-half stories in height. No garage apartments which are used for rental purposes are allowed.

(d) 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 Board or the ACC, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. All mail and newspaper boxes are subject to approval by the Board or the ACC. Fences shall be permitted on any Lot; provided, however, that the design and materials of any fence are approved by the Board, or the ACC, as the case may be, and provided further, that no fence shall be over six feet in height or forward of a point located fifteen feet to the rear of the front elevation of the dwelling on the Lot. Provided further no fences will be erected within the grass drainage swales without express approval of the Board or the ACC. Clothes lines are not permitted on any Lot.

(e) Off street parking for not less than two (2) passenger automobiles and a two (2) car garage must be provided on each Lot prior to the occupancy of any dwelling constructed

on said Lot which parking areas and the driveways thereto shall be constructed of concrete, brick, asphalt, or turf stone, or any other material approved by the Board or ACC.

11.4 Building Type. No Lot shall be used for any purpose except for residential purposes. All numbered Lots are restricted for construction of single family dwellings only.

11.5 Alterations and Subdividing. Subject to the provisions herein, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Board of Directors of the Association. No Common Elements or any part thereof ay be altered by a Member in any way.

11.6 Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, are at all times kept properly leashed or under the rule of their owner and do not become a nuisance to the neighborhood. The owner of an animal is responsible for cleaning up pet feces and urine.

Animals shall be leashed at all times when on the premises of the Waterfront Recreational Facility. No animals shall be tied to any part of the dock.

11.7 Boats, Boat Slips, and Waterfront Recreational Facility. The following restrictions shall be in addition to any regulations and requirements imposed by The North Carolina Division of Coastal Management or any other governmental agency or Permit.

(a) Boats Generally. Boats docked at the slip may not exceed twenty-five (25') in length or eight feet (8') in width, without express written approval of the Association Board of Directors. No "tramp vessels", "derelict vessels", barges, or commercial vessels may be moored in any Boat Slip. All Boats shall be maintained in a neat, clean, ship shape, and seaworthy condition. No inoperable Boat without current registration and insurance, will be permitted on any Boat Slip. The Association shall have the right to have all prohibited Boats towed away and stored at the Member's expense. No major repairs or complete overhauls to any Boat may be made at a Boat Slip. Boats may not be used as permanent residences.

(b) Devices and Structures. No device, structure or other thing shall be located or maintained on any Boat Slip, dock or other Common Elements, except one hydraulic lift and power tower per Boat Slip, the design and location of which must be approved by the Association. All fishing gear and other marine devices and equipment when not in use shall be stored on board of a Boat and not in any of the Common Elements.

(c) Dockways. Children under twelve (12) years of age are not permitted on Waterfront Recreational Facility without the immediate presence of a parent or other responsible adult. Parents shall not allow children to run and play on the dockways. Dockways shall be kept clear and uncluttered.

(d) Finger Extensions and Hydraulic Lifts. Each Boat Slip Owner shall maintain its respective hydraulic lift and power tower as a Limited Common Element.

(e) Fish Cleaning. Fish cleaning of any kind will not be permitted at the Waterfront Recreational Facility except at a place or places designated by the Board of Directors.

(f) Food and Beverages. No cooking shall be allowed on any dock.

(g) Insurance and Proof of Insurance. Boat Slip Owners shall maintain replacement cost insurance on their boats at fair market value and shall provide the Association with proof of that insurance.

(h) Mooring/Storm Precautions. To prevent damage from weather or storms, adequate mooring lines must be properly secured and maintained, and all outside property of any Member shall be battened down, secured, or placed inside the Boat. The Association may order boats immediately removed from their slips in the event of impending hurricanes or other storms in order to protect the Waterfront Recreational Facility and other Common Elements. Upon the issuance of any such order, each Member shall immediately remove his Boat from the Boat Slip. Any damage caused to the Waterfront Recreational Facility or Common Elements on account of such Member failing to remove his Boat shall be repaired by the Association at the sole cost and expense of such Member.

(i) Non-commercial Use. Boat Slip Owners shall provide the Association with evidence that the boats moored in their Boat Slips belong to them. Boat Slips shall not be rented by the Members and are restricted only to personal, recreational and non-commercial use.

(j) Operation of Engines. Unnecessary operation of engines in slips is not permitted.

(k) Boat Speed Limits. The boat speed limit within the Waterfront Recreational Facility shall be dead slow, or wakeless speed, whichever is slower.

(l) Swimming. Swimming from docks, floats or gangways is not allowed.

(m) Trash Disposal. Loose garbage shall not be deposited anywhere. No trash or empty boxes of any kind shall be left on the dockways. No one shall throw, discharge, pump or deposit from any boat or float any refuse, oil, spirits, flammable liquid or polluting matter in the harbor. All such matter shall be deposited at approved oil disposal facilities. Waste material such as paper, beer or drink cans, cigarette stubs, trash, etc., must not be thrown from the Boats or dock areas. In other words, if you pack it in you pack it out.

(n) Water/Power Lines and Connections. A Boat Slip Owner shall be entitled to obtain electrical service and water service to its respective Boat Slip at said Boat Slip Owner's expense. Water or power lines shall not be left unattended across main walks. All connections to electrical receptacles shall be with marine grade cords only. All accessory cords shall be

maintained by the Boat Slip Owner for his slip in good, safe operating condition. Frayed cords shall promptly be replaced at the Boat Slip Owner's expense.

11.8 Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot for the purpose of illumination shall be clear, white or non-frost lights or bulbs.

11.9 Guests. Every Member shall insure that his guests abide by this Declaration and all rules and regulations and shall be responsible to the Association for any violation. The number of guests which a Member may have at any one time may be limited by the Association.

11.10 Lot Maintenance, Landscaping and Irrigation. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. In the event the Owner fails to do so, then, after thirty (30) days notice from the ACC, the Association or its designee may enter upon the Lot and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass, and in such event a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Lot, including collection costs and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens.

Prior to initial occupancy of the residence constructed on each Lot, the front yard area of such Lot must be sodded; provided, however, that any areas to be used as planting beds for trees and shrubs need not be sodded so long as such beds are planted prior to initial occupancy of the Lot. The Board or the ACC, as the case may be, may on account of adverse weather conditions or for other good cause shown permit such landscaping to be done within a period of six months after initial occupancy of the residence.

Each lot owner shall install an irrigation system which provides irrigation to substantially all of the front and rear yard grassed areas. This system shall be installed no later than 30 days after issuance of a certificate of occupancy or the house is occupied whichever occurs first.

11.11 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, Boat, Boat Slip or Common Elements, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots or Boat Slips by the Owners/Members thereof. It shall be the responsibility of each Member to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on the Owner's Lot or Boat Slip which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

11.12 Parking. No overnight parking shall be allowed in the Common Elements. There shall be no parking of motor homes, other recreational vehicles or trailers, including boat trailers, at any time in the Common Elements.

11.13 Safety and Compliance with Law. All persons using the facilities shall do so lawfully and in such fashion as to maintain and preserve those facilities and the Common Elements. Each person shall be responsible for his/her own conduct and safety. All persons shall comply with all ordinances of Pender County.

11.14 Signs. No signs shall be permitted on any Lot or in the Common Elements without permission of the Board of Directors. In the even a Lot Owner wishes to place a "for sale" sign on his or her Lot, the Lot Owner shall be required to use the uniform "for sale" sign provided by and/or approved by the Association.

No signs (including "for sale" signs) shall be permitted on any Boat Slip or in the Common Elements except as provided herein.

11.15 Statuary, Television Satellite Dishes and Antennas. No yard statuary or 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 Board of Directors of the Association or its ACC.

11.16 Temporary Structures. No boat, motor boat, camper, trailer, motor or mobile homes, tractor/trailer, or similar type vehicle, shall be permitted to remain in the front or side yard of any Lot or on any street at any time, without the written consent of the Association or its designee.

11.17 Vehicles. No inoperable vehicle or vehicle without current registration and insurance, will be permitted on any Lot, street or Common Elements. The Association shall have the right to have all such vehicles towed away at the Owner's expense. 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.

## ARTICLE 12: GENERAL PROVISIONS

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

12.2. Enforcement of Storm Water Runoff Regulations. The following covenants are intended to ensure ongoing compliance with state stormwater management permit number SN8 040320, as issued by the Division of Water Quality. These covenants may not be changed or deleted without the consent of the State of North Carolina.

(a) No more than 5,000 square feet of any lot shall be covered by structures or impervious materials. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge

of the pavement. Impervious materials include, asphalt, gravel, concrete, brick, stone, slate or similar material, but do not include wood decking or the interior surface of swimming pools.

(b) Swales shall not be filled in, piped, or altered except as necessary to provide driveway crossings.

(c) Built-upon area in excess of the permitted amount requires state stormwater management permit modification prior to construction.

(d) All permitted runoff from out parcels or future development shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall perform in a manner that maintains the integrity and performance of the system as permitted.

(e) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.

(f) These covenants are to run with the land and be binding on all persons and parties claiming under them.

(g) Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

(h) Each lot will maintain a 30' wide vegetated buffer between all impervious areas and surface waters.

(i) All roof drains shall terminate at least 30' from the mean high water mark of surface waters.

(j) Filling in, piping or altering any designated 5:1 curb outlet swale associated with the development is prohibited by any persons.

(k) This project proposes a curb outlet system. Each designated curb outlet swale shown on the approved plan must be maintained at a minimum of 100' long with 5:1 (H:V) side slopes or flatter, have a longitudinal slop no steeper than 5%, carry the flow from a 10 year storm in a non-erosive manner, and maintain a dense vegetated cover.

12.3 Sewer Treatment Facilities. The original developer provided an off premises sewage treatment plant together with pumps, piping, lift stations and other equipment and apparatus along the subdivision streets and lot lines so as to provide sewage treatment to Lots 1, 2, 3 as shown in Map Book 41 at Page 142 of the Pender County Registry and Lots 16, 17, 18, 19, 20 and 21 as shown in Map Book 40 at Page 40 of the Pender County Registry. All Owners the aforesaid lots within the Subdivision shall be required to connect to the System and pay to the operator or owner of the System all periodic usage and treatment fees. All owners to Lots 1, 2, 3 as shown in Map Book 41 at Page 142 of the Pender County Registry and Lots 16, 17, 18, 19, 20 and 21 as shown in Map Book 40 at Page 40 of the Pender County Registry shall be required to

hook on to the System and to continue to use said System, and private septic tanks within each of the aforementioned Lots are expressly prohibited. Each lot owner who is required to hook up to the System shall be required to install such pump stations, pipes, septic tanks or such other equipment as the Association may require in order to comply with the plan approved by the North Carolina Division of Environmental Health and approved by the Pender County Health Department for said system. The Association reserves unto itself or its agents or successors the perpetual easement across the lots required to use the system for the purpose of inspecting each lot to insure that each lot which is required to use the system has properly installed the hook up to the system.

The Association shall be obligated to maintain, operate and repair the System and to provide for assessments, revenues and expenditures necessary to operate said system in accordance with State and County permits as the case may be. The wastewater collection treatment and disposal area are Common Elements that shall receive the highest priority for expenditure by the Association, except for federal, state, and local taxes.

12.4 Liens and Rights of Institutional Note Holders. Any institutional holder of Mortgage will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects a material portion of the Development covered by the Mortgage securing its loan, (e) receive written notice of any sixty-day (60) delinquency in the payment of assessments or charges owed by any Member of any property which is security for the loan, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the content of a specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy.

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

12.6 Lots Subject to Declaration/Enforcement. All present and future Owners, tenants and occupants of Lots and their guests or Invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated by the Members. Failure by the Association or by any Member to enforce any covenant or restriction herein contained shall in

no event be deemed a waiver of the right to do so thereafter

12.7 Amendment of Declaration. Except as provided elsewhere herein, the covenants and restrictions of this Declaration may be amended only by an instrument duly recorded in the Office of the Register of Deeds of the county where the Development is located, executed by the duly authorized officers of the Association upon the vote of not less than a two-thirds (2/3) majority of the Lot Owners; provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein.

IN WITNESS WHEREOF, the parties hereto, have caused this Declaration to be executed in their corporate name and the corporate seal affixed by its duly authorized officers this the day and year first above written.

**PELICAN SOUND HOMEOWNERS'  
ASSOCIATION, INC.**

BY: Karen Heffner  
President

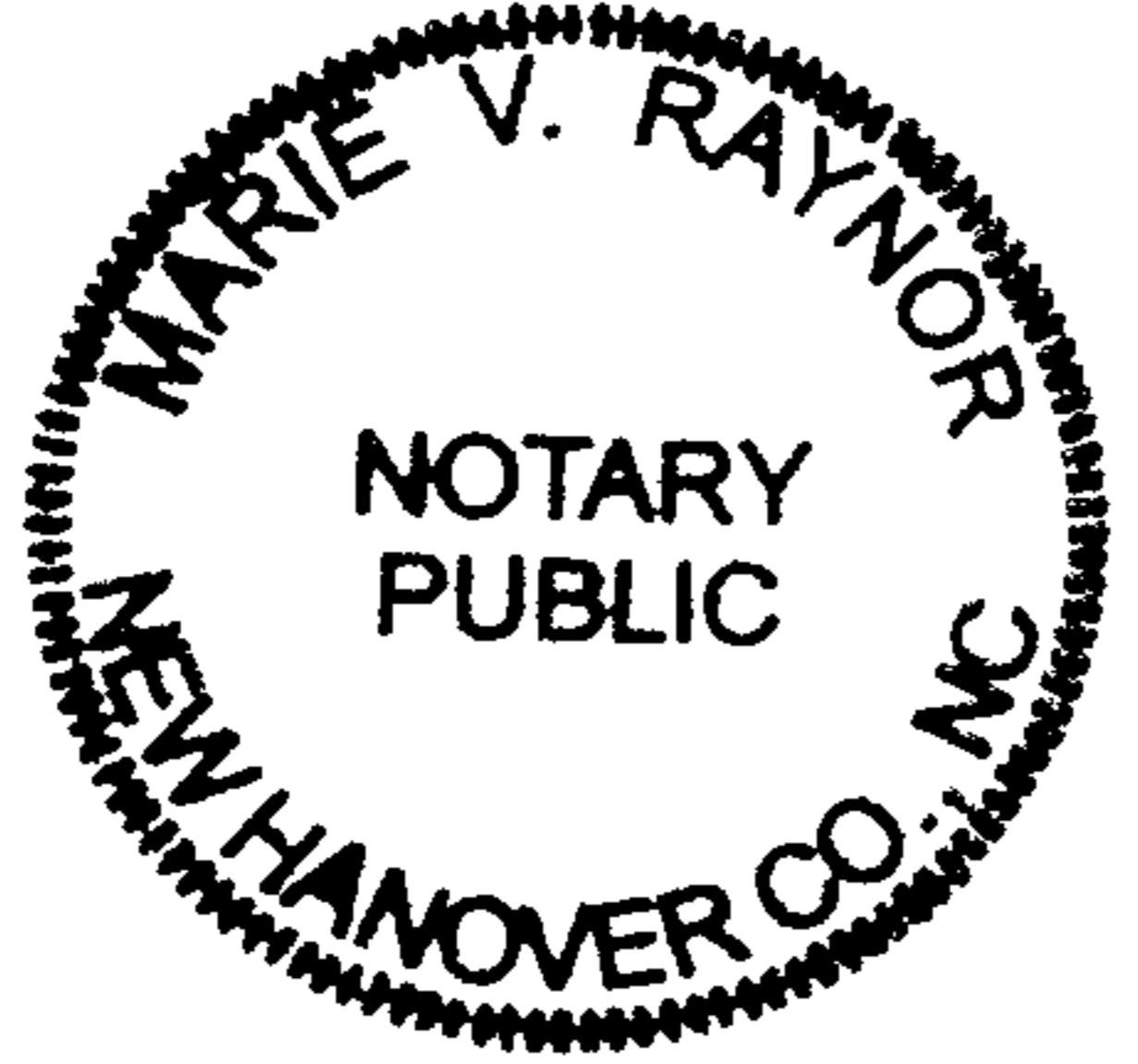
STATE OF NORTH CAROLINA

COUNTY OF New Hanover

I, Marie V. Raynor, a Notary Public in and for said County and State, do hereby certify that Karen Heffner personally came before me this day and acknowledged that he/she is President of **PELICAN SOUND HOMEOWNERS' ASSOCIATION** a North Carolina non-profit corporation which is a the entity described in and which executed the foregoing instrument; that he executed said instrument in the Association name by subscribing his name thereto.

WITNESS my hand and notarial seal, this the 28<sup>th</sup> day of January, 2016.

My Commission Expires: 6.13.2020 Marie V. Raynor  
Notary Public



**PELICAN SOUND WATERFRONT RECREATIONAL  
FACILITIES OWNERS' ASSOCIATION, INC.**

BY: Karen Heffner  
President

STATE OF NORTH CAROLINA

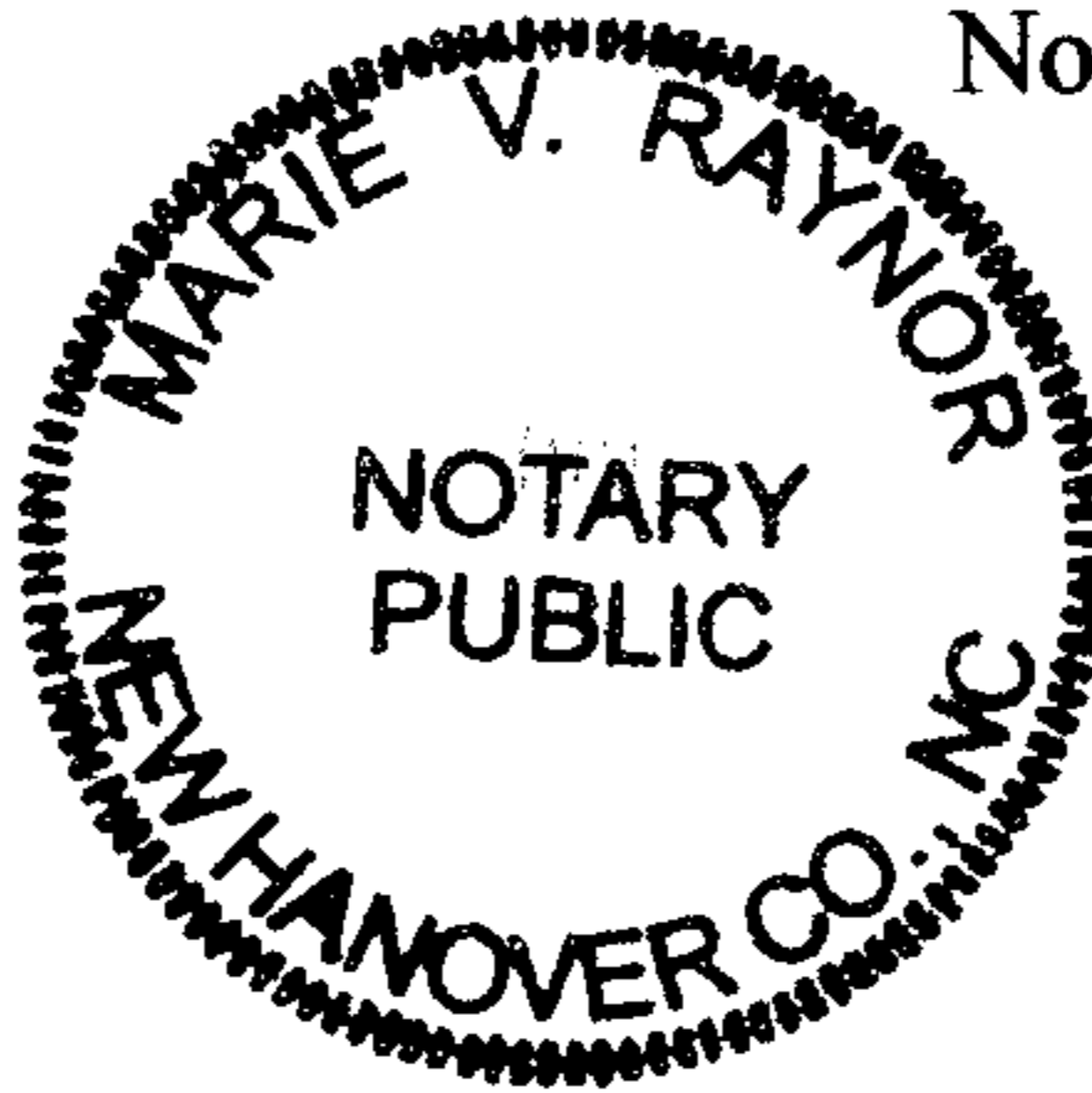
COUNTY OF NEW HANOVER

I, MARIE V RAYNOR, a Notary Public in and for said County and State, do hereby certify that KAREN HEFFNER personally came before me this day and acknowledged that he/she is President of **PELICAN SOUND WATERFRONT RECREATIONAL FACILITIES OWNERS' ASSOCIATION, INC.**, a North Carolina non-profit corporation which is a the entity described in and which executed the foregoing instrument; that he executed said instrument in the Association name by subscribing his name thereto.

WITNESS my hand and notarial seal, this the 8TH day of FEBRUARY, 20 16.

My Commission Expires: 6-13-2020

Marie V. Raynor  
Notary Public



**EXHIBIT "A"**

Being known and designated as Section 1 of Pelican Sound as shown in Map Book 39 at Page 81 in the Office of the Register of Deeds of Pender County, North Carolina, reference to which is hereby made for a more particular description.

Being known and designated as Section 2 of Pelican Sound as shown in Map Book 39 at Page 142 in the Office of the Register of Deeds of Pender County, North Carolina, reference to which is hereby made for a more particular description.

Being known and designated as Section 3 of Pelican Sound as shown in Map Book 40 at Page 40 in the Office of the Register of Deeds of Pender County, North Carolina, reference to which is hereby made for a more particular description.

Being known and designated as Lots 1, 2 and 3 as shown on that map entitled "Three Lot Division of the Cedar Landing Partners, LLC Tract" recorded in Map Book 41 at Page 142 in the Office of the Register of Deeds of Pender County, North Carolina, reference to which is hereby made for a more particular description.

**EXHIBIT "B"**

BEING all of the Property shown as Open Space consisting of 37,992 square feet amounting to 0.87 acres as shown on the Map of Section 1 of PELICAN SOUND recorded in Map Book 39, at Page 87 of the Pender County Registry together with the Improvements shown as the Pier and Ten (10) Boat Slips extending southeastwardly from the Open Space into Topsail Sound as depicted on the Map for Section 3 of PELICAN SOUND recorded in Map Book 40, at Page 40 of the Pender County Registry.

**EXHIBIT "C"**

The following Lots shall have, as an appurtenance thereto, the following numbered Boat Slips as more particularly described in Map Book 40, Page 40 in the Office of the Register of Deeds of Pender County, North Carolina, reference to which is hereby made for a more particular description.

<u>Lot Number</u>	<u>Boat Slip Number</u>
14	1
15	2
16	3
17	4
18	5
19	6
20	7
21	8
22	9
23	10