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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR JACOBS BLUFF**

Prepared by: **MURCHISON, TAYLOR, & GIBSON, PLLC**
16 North Fifth Avenue, Wilmington, NC 28401

RETURN TO

NORTH CAROLINA

NEW HANOVER COUNTY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR JACOBS BLUFF (this "Declaration") is made effective this 4th day of January 2017, by **JOHN A. BLACK AND WIFE, KATHRYN F. BLACK** ("Declarant").

WITNESSETH:

Whereas, Declarant is the owner of certain real property in New Hanover County, North Carolina, known as "Jacobs Bluff" (the "Property") which is more particularly shown on a plat recorded in Map Book 62, Page 255 of the New Hanover County Registry (the "Plat"), reference to which Plat is hereby made for a more particular description;

WHEREAS, Declarant desires to subject the Property to this Declaration under a general scheme of development for the mutual benefit of the Owners (as defined herein), and to form an association of the Owners to provide for, among other things, the preservation of the property values and the desirability and attractiveness of the real property in Jacobs Bluff, and to provide for the establishment and the continued maintenance of the Common Elements (as defined herein); and

NOW THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the North Carolina Planned Community Act (the "Act") and to the following easements, covenants, conditions and restrictions of this Declaration, all of which shall run with the real property subjected to the Declaration. The Declaration, including all conditions, restrictions and affirmative obligations set forth herein, shall be binding on and shall inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns.

ARTICLE I
DEFINITIONS

In addition to other terms defined throughout the Declaration, the following capitalized terms shall have the following meanings:

SECTION 1. Association shall mean and refer to **Jacobs Bluff Owner's Association, Inc.**, a North Carolina non-profit corporation, its successors and assigns, the owner's association organized pursuant to the Act for the purposes set forth herein.

SECTION 2. Assessments shall mean the Annual, Special, Working Capital, and Individual Assessments provided for in **Article IV** of the Declaration.

SECTION 3. Board of Directors or Board shall mean the Board of Directors of the Association, who shall be the body designated in this Declaration to act on behalf of the Association.

SECTION 4. Bylaws shall mean and refer to the bylaws of the Association, a copy of which shall be provided to all Owners.

SECTION 5. Common Elements shall mean all real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The following are specifically designated as Common Elements: the private street known as Enclave Drive, all easements shown on the Plat, and the Existing Pier or, if built, the Community Boating Facility (as more particularly described in **Article X**).

SECTION 6. Common Expenses means actual and estimated expenditures made by or financial liabilities of the Association, together with any reasonable allocations to reserves.

SECTION 7. Community Boating Facility shall mean the proposed pier with gazebo, floating dock with three (3) boat slips each with an electric boat lift and two (2) floating day docks, all as more particularly described in **Article X**.

SECTION 8. Declarant shall mean and refer to JOHN A. BLACK AND WIFE, KATHRYN F. BLACK, and their successors and its assigns, if such successors or assigns who or which are specifically granted some or all of Declarant's rights pursuant to a recorded instrument executed by the immediately preceding Declarant.

SECTION 9. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 10. Existing Pier shall mean the pier that is attached to Lot 3 of Jacobs Bluff as of the recording of this Declaration as more particularly described in **Article X**.

SECTION 11. Lot shall mean any numbered lot within Jacobs Bluff shown on the Plat or any approved and recorded revision plat. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon.

SECTION 12. Owner shall mean 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.

SECTION 13. Person means a natural person, a business or nonprofit corporation, limited liability company, trustee(s) of a business trust, trustee(s) of charitable or noncharitable trust, limited or general

partnership, joint venture, government, governmental subdivision, governmental agency, or other legal entity.

SECTION 14. Property or Jacobs Bluff shall mean and refer to the Property as defined in the Preamble to this Declaration.

ARTICLE II PROPERTY RIGHTS AND EASEMENTS

SECTION 1. Owners' Property Rights and Easement of Enjoyment. Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) All of the restrictions and limitations in this Declaration, including but not limited to the right of the Board to impose reasonable charges and fines for late payments and to suspend the voting rights and the rights to use the Common Elements by an Owner as further provided herein.

(b) The right of the Board to make and amend reasonable rules and regulations governing the use of Jacobs Bluff, the Lots and the Common Elements by the Owners.

SECTION 2. Easements in Favor of Declarant and the Association. The following easements are reserved to Declarant and the Association, their agents, contractors, employees, successors and assigns.

(a) Easements as necessary in the lands constituting the Common Elements and the rear and front ten (10) feet of each Lot and side five (5) feet of each Lot for the installation and maintenance of utilities and drainage facilities including the right to go upon the ground 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 on, in or over each Lot and such other areas as are shown on the Plat of the Property, the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance, the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. No structures or plantings or other material shall be placed or permitted to 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. These easement areas (whether or not shown on the recorded Plat for Jacobs Bluff) but not the improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

(b) Easements over, under, and across the private street shown on the Plat as Enclave Drive, access easements, and Common Elements shown on the Plat as necessary to provide access, ingress and egress to and from each of the Lots, and for the installation of utilities for any of the three Lots.

(c) Easement over and across the 10' Pier Access Easement shown on the Plat for pedestrian access to the Existing Pier or the Community Boating Facility, as applicable and as further described in **Article X**, together with the right to reasonably access, repair and maintain and replace the 10' Pier Access Easement.

(d) Easement over the ten (10) feet riparian portion of Lot 3 for the purposes of repairing and maintaining the Existing Pier or the Community Boating Facility as applicable and as further described in **Article X**, and for any future dredging of the nearby areas of the Whiskey Creek as may be necessary for the use of the Existing Pier or the Community Boating Facility.

SECTION 3. Other Easements. The following additional easements are granted by Declarant:

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

(b) In case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Owner is present at the time of such emergency, the Association or any other Person authorized by it, shall have the immediate right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Owners.

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

SECTION 4. 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 Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in Jacobs Bluff, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

ARTICLE III HOMEOWNERS' ASSOCIATION

SECTION 1. Formation of Association. The Association was formed on January 3, 2017. The Association is a North Carolina nonprofit corporation organized pursuant to the North Carolina Nonprofit Corporation Act for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and to enforce this Declaration. The Association shall perform its functions in accordance with this Declaration, its Articles of Incorporation and Bylaws. The Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

SECTION 2. Membership. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

SECTION 3. Voting Rights. The Association shall have one class of voting Membership known as Class A Membership. Class A Members shall be all Owners, and each Lot shall be entitled to one (1) vote. When more than one Person holds an interest in any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. Fractional voting with respect to any Lot is prohibited. There is no Class B Membership and no Declarant Control Period.

SECTION 4. Government Permits. After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for Jacobs Bluff, all duties,

obligations, rights and privileges of Declarant under any water, sewer, land use, stormwater and utility agreements, easements and permits for Jacobs Bluff with municipal or governmental agencies or public or private utility companies, shall automatically become the duties, rights, obligations, privileges and the responsibility of the Association.

SECTION 5. Common Element Maintenance. The Association shall at its sole cost and expense be responsible for the operation and maintenance of each Common Element within Jacobs Bluff from the date of completion of its construction or improvement by the Developer, whether or not (i) such Common Element has actually been deeded to the Association, or (ii) any permit issued by a governmental agency to Declarant for the construction and operation of the Common Element has been transferred from Declarant to the Association or assumed by the Association. If Declarant is required by any government agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse Declarant the cost of such operation and maintenance within thirty (30) days after Declarant renders a bill to the Association therefor. The Association agrees to levy a Special Assessment within thirty (30) days of receipt of such bill to cover the amount thereof if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment.

ARTICLE IV **COVENANTS FOR ASSESSMENTS**

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner covenants and agrees to pay to the Association the following assessments (collectively the "Assessments" or "Assessment").

- (a) Annual Assessments;
- (b) Special Assessments;
- (c) Working Capital Assessments; and
- (d) Individual Assessments.

The Assessments, together with interest, costs, late fees and any attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be imposed by law (the "Reasonable Attorneys' 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 Attorneys' 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 Owner's successors in title unless expressly assumed by them.

SECTION 2. Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and residents of Jacobs Bluff and in particular for the acquisition, maintenance, repair, improvement and replacement of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Lots and the Common Elements. The funds arising from said Assessments or charges may be used for any or all of the following purposes: the costs of repairs, replacements and additions; the cost of labor, equipment, materials, management and supervision; the payment of any taxes and assessments assessed against the Common Elements and any improvements thereupon; the maintenance of the grounds and elements as described in this Declaration; the procurement and maintenance of insurance in accordance with the Bylaws; the performance of any other maintenance or repair obligations under this Declaration; the erection, maintenance and repair of signs, entranceways, landscaping and lighting within easements provided therefor or the Common Elements, road medians and islands; the payment of charges for utilities, garbage

collection and municipal water and sewer services furnished to the Common Elements; establishing working capital, the costs of enforcing this Declaration, insurance premiums, legal and accounting fees and governmental charges, establishing and funding adequate reserve accounts for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; establishing working capital, paying dues and assessments to any organization or other association of which the Association is a member; and doing any other things necessary or desirable as determined by the Board of Directors to keep the Common Elements in good operating order and repair.

SECTION 3. Annual Assessments. At least thirty (30) days before the beginning of each fiscal year, the Board of Directors shall adopt a proposed annual budget, as follows:

A. Budget for the Annual Assessments consisting of the annual cost of operating, managing, maintaining, improving, repairing and replacing the Common Elements; payment of utilities related to the Common Elements; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees; governmental charges; and establishing working capital;

B. Budget for reserves which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the annual budget adopted a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect to both amount and timing by annual contributions over the budget period; and

C. Such other budgets as the Board deems appropriate.

Within thirty (30) days after adoption of the proposed budgets, the Board shall provide to all Owners a summary of the budget and notice of a meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. Each budget is ratified unless at the meeting sixty-seven percent (67%) of all of the Owners in the Association entitled to vote on the particular budget rejects the budget. In the event a proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The Annual Assessments for each Lot shall be established based on the annual budget thus adopted, with all Lots funding the budget for the Annual Assessments. The due date for payment shall be established by the Board. The Board shall have the authority to require the Assessments to be paid in periodic installments.

SECTION 4. Special Assessments. 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 following purposes:

(a) To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the Owners who are subject to such assessment voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all Owners to be assessed not less than ten (10) days or more than sixty (60) days in advance of the meeting.

(b) Without a vote of the Owners, to reimburse Declarant as provided for in **Article III, Section 6**.

SECTION 5. Working Capital Assessments. Upon every acquisition of title to any Lot by an Owner from the Declarant, such Owner shall pay the sum equal to that year's Annual Assessment to the Association as working capital to be used for operating and capital expenses of the Association. Such amounts paid for working capital are not to be considered as advance payment of the Annual or any other Assessments. The amount of the Working Capital Assessment may be revised by the Board of Directors at any time in its reasonable discretion.

SECTION 6. Individual Assessments. In addition to the other Assessments set forth in this **Article IV**, the Board of Directors may levy an Individual Assessment against specific Lot(s) for the following purposes:

(a) For the payment of any Common Expenses which are designated to benefit that specific Lot(s).

(b) For the payment of those amounts levied against any Lot owned by an Owner under **Article VI, Section 4** and/or **Article VIII, Sections 2(a) and (b)**.

SECTION 7. Rate of Assessment. All Annual Assessments shall be levied at a uniform rate against all Lots.

SECTION 8. Commencement of Assessments. Assessments for all Lots shall commence upon the date of acceptance by an Owner of a deed from Declarant.

SECTION 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 or at any other interest rate adopted by the Board of Directors. 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. The Association may also exercise all remedies described in **Article VIII**. The Association may collect Reasonable Attorneys' Fees from any Owner for attorney's fees incurred by the Association as a result of any Owner's failure to timely pay any Assessment or installment thereof. 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. The Association may also establish and collect late fees for delinquent installments.

SECTION 10. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

(a) The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1 and 47F-3-115 of the Act are enforceable as Assessments.

(b) The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

(c) The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

(d) Any judgment, decree, or order in any action brought under this section shall include costs and Reasonable Attorneys' Fees for the prevailing party.

(e) Where the holder of a first mortgage or deed of trust of record, or other Purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such Purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such Purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Owners including such Purchaser, its heirs, successors and assigns.

ARTICLE V

RIGHTS OF DECLARANT

Declarant shall have, and there are hereby reserved to Declarant, the following rights, powers and privileges so long as Declarant owns any the Lots within Jacobs Bluff:

SECTION 1. Amendment of Declaration by Declarant. As long as Declarant owns any of the Property, this Declaration may be amended by Declarant for the reasons listed below. Retention of this right by Declarant is not intended to materially alter the general or common scheme of development for the property herein described but to correct and/or modify situations or circumstances which may arise during the course of development.

- (a) In any respect, prior to the sale of the first Lot.
- (b) To correct any obvious error or inconsistency in drafting, typing or reproduction.
- (c) To qualify the Association or the Property, or any portion thereof, for tax-exempt status.

(d) To conform, by amendment or otherwise, this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Department of Veterans Affairs, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

ARTICLE VI

USE RESTRICTIONS, ARCHITECTURAL CONTROL AND MAINTENANCE

SECTION 1. Approval of Plans for Building and Site Improvements. No dwelling, wall or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or

alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee.

SECTION 2. Architectural Control Committee. The Architectural Control Committee ("ACC") shall consist of the three members of the Board of Directors and shall have exclusive jurisdiction over all construction and improvements described in this **Article VI**.

If the ACC fails to approve or disapprove any such Owner's application within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and full compliance with this Article will be deemed to have occurred. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations that in the sole and uncontrolled discretion of the ACC shall be deemed sufficient. One copy of all plans and related data shall be furnished to the ACC for its records. The ACC shall not be responsible for any structural or other defects in plans and specifications submitted to it or in any structure erected according to such plans and specifications.

SECTION 3. Minimum Standards for Site Improvements.

(a) Each dwelling shall have a minimum of **3,500** square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open/screened porches, and like areas.

(b) 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. 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 Architectural Control Committee, provided, however, that no structure shall be constructed closer to a Lot line than is permitted by applicable governmental regulations.

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

(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 ACC so as to preclude the same from causing an unsightly view from any street within Jacobs Bluff, or from any other residence within Jacobs Bluff. All mail and newspaper boxes shall be uniform in design. Design of mail and newspaper boxes shall be furnished by the Developer or the ACC. No fences shall be permitted unless the design, placement, and materials of any fence are approved by the ACC. Clotheslines are not permitted on any Lot.

(e) Off-street parking for not less than two (2) passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said Lot, which parking areas and the driveways thereto shall be constructed of concrete, brick, asphalt, or turf stone, or any other material approved by the ACC.

(f) 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-frosted lights or bulbs. Exterior spot/flood lights must be approved by the ACC and any such approved spot/flood lights shall be aimed to the greatest extent possible to direct light away from the adjoining Lots. All mail and newspaper boxes shall be uniform in design, which design will be furnished by the ACC.

SECTION 4. Use Restrictions.

(a) Land Use and Building Type. No Lot shall be used for any purpose except for residential purposes. All Lots are restricted for construction of one single family dwelling (plus a detached garage, if there is not one attached to the residence, and such other accessory buildings as may be approved by the ACC). No amendment to the provisions of this **Section 4(a)** may be made without the affirmative vote of all Owners.

(b) Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. 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 by the Owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on the Owner's Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area.

(c) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, shed, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Architectural Control Committee.

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

(e) Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that no more than four (4) domesticated dogs, domesticated cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, are at all times kept properly leashed or under the control of their owner and do not become a nuisance. Each Owner shall be responsible for immediately collecting and properly disposing of wastes of his/her pet(s).

(f) TV Satellite Dishes and Outside Antennas. No TV satellite signal receiving dishes or 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 Architectural Control Committee; provided, however, any approved dishes or antennas shall be enclosed or shielded so as to preclude the same from causing an unsightly view from any street within Jacobs Bluff, or from any other residence within Jacobs Bluff

(g) Construction in Common Elements. No Person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Board of Directors.

(h) Signs. No signs (including "for sale" or "for rent" signs) shall be permitted on any Lot or in the Common Elements without permission of the Board of Directors. With regard to the regulation of political signs, the Association, pursuant to the provisions of the Act, may (i) prohibit the display of political signs on a Lot earlier than forty-five (45) days before the day of an election and later than seven (7) days after an election day, and/or (ii) regulate the size and number of political signs that may be placed on a Lot (but only to the extent the Association's regulation is no more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property). If the local government in which the applicable property is located does not regulate the size and number of political signs on residential property, the Association shall permit at least one (1) political sign with the maximum dimensions of 24 inches by 24 inches (24" x 24") on a Lot. For the purposes of this paragraph, a "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

(i) Subdividing. No Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Board of Directors.

(j) Flags/Statuary. No flags, outdoor statuary or other decorative objects may be placed on any Lot unless and until permission for the same has been granted by the Architectural Control Committee. Notwithstanding any other provision in this Section, either the American Flag or the North Carolina flag having the maximum dimensions of four feet by six feet (4'x6') may be flown on a pole no longer than 5 feet 6 inches from a pole holder attached to the home in an approved location which can be reached by hand from the ground below so as to be easily installed and removed. No flagpoles shall be installed in any other locations on any Lot. Flags will be displayed in accordance with traditional rules and patriotic customs set forth in 4 U.S.C. §§5-10, as amended, governing the display and use of the American Flag.

(k) Leases. Without Board approval, rental contracts for residences shall not be for a term shorter than **six (6) consecutive months**. All leases and proposed tenants shall be subject to the Board's prior approval and the Board reserves the right to perform a background check on the proposed tenants. An Owner who leases his residence shall be deemed to have assigned all of the Owner's rights to the lessee of for the duration of the lease and any such lessee shall abide by all the restrictions contained in this Declaration. Any such lease shall not release the Owner from his liability for damage to Jacobs Bluff caused by said lessee. The Owner must make available to the lessee copies of the Declaration. Any lease shall provide that the lessee and all occupants of the leased residence shall be bound by the terms of the Declaration; provided, however, that the lack of such a provision shall not waive the Declaration in any way.

SECTION 4. Maintenance. Each Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects; provide however, all portions of a Lot that include Common Elements (i.e., Enclave Drive or the 10' Pier Access Easement) shall be maintained and repaired by the Association as provided in **Article VI**. All improvement and structures on an Owner's Lot shall be kept neat and in good condition and repair.

ARTICLE VII

STORMWATER RESTRICTIONS

SECTION 1. Enforcement of Stormwater Runoff Regulations. The maximum allowable built-upon area per Lot is as follows:

Lot 1 - 4,646 SF
 Lot 2 - 4,474 SF
 Lot 3 - 8,242 SF

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. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.

Built-upon area in excess of the permitted amount and any modification to the total allowed land disturbance (as shown on site plans on file with the City of Wilmington) may require a permit modification and shall require approval of the ACC. The covenants in this **Article VII** are intended to insure continued compliance with storm water runoff rules adopted by the State of North Carolina and therefore, may be enforced by the State of North Carolina.

ARTICLE VIII **LOTS SUBJECT TO DECLARATION/ENFORCEMENT**

SECTION 1. Lots Subject to Declaration. The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of Jacobs Bluff and the Lots. 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 run with and bind the land and shall bind any Person having at any time any interest or estate in any Lot, their heirs, successors and assigns, 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 Owners.

SECTION 2. Enforcement and Remedies. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns. The Association shall be entitled to enforce its Articles of Incorporation, Bylaws, and rules and regulations and this Declaration and to collect from any Owner the Reasonable Attorneys' Fees incurred by Association in enforcing the same. In addition to the remedies otherwise provided for herein concerning the collection of Assessments, the following remedies shall be available:

(a) **Association to Remedy Violation.** In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Articles of Incorporation, or rules and regulations, the Board of Directors, after thirty (30) days' notice, may enter upon the Lot and remedy the violation or perform the required maintenance or other activities, all at the expense of the Owner. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be chargeable to the Lot, including collection costs and reasonable attorneys' fees. Such amounts shall be due and payable within thirty (30) days after Owner is billed. If not paid within said thirty (30) day period, the amount thereof may immediately be added to and become an Individual Assessment levied against said Owner's Lot. In the event that any maintenance activities are necessitated to any Common Elements by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, 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, the cost of the same shall be the personal obligation of the Owner and if not paid to the

Association upon demand, may immediately be added to and become an Individual Assessment levied against said Owner's Lot.

(b) Fines. The Association may, in accordance with the procedures set forth in the Act, establish a schedule of and collect fines for the violation of this Declaration or of the Association's Articles of Incorporation, Bylaws or rules and regulations. If an Owner does not pay the fine when due, the fine shall immediately become an Individual Assessment against the Owner's Lot and may be enforced by the Association as all other Assessments provided for herein.

(c) Suspension of Services and Privileges. The Association may, in accordance with the procedures set forth in the Act suspend all services and privileges provided by the Association to an Owner (other than rights of access to Lots) for any period during which any Assessments against the Owner's Lot remain unpaid for at least thirty (30) days or for any period that the Owner or the Owner's Lot is otherwise in violation of this Declaration or the Association's Articles of Incorporation, Bylaws, or rules and regulations.

SECTION 3. Miscellaneous. 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. The remedies provided herein are cumulative and are in addition to any other remedies provided by law.

ARTICLE IX

INSURANCE AND RECONSTRUCTION

SECTION 1. Insurance. Subject to the provision of **Article X** regarding insurance for the Existing Dock and portions of the Community Boating Facility, the Board of Directors on behalf of the Association, as a Common Expense, must at all times keep the Common Elements and other property of the Association insured against loss or damage by fire or other hazards and such other risks, including directors liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Owners. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each Owner to insure sure his own property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Owners or their mortgagees. For any portions of the Common Elements that are also part of a Lot (for example, Enclave Drive and the 10' Pier Access Easement and the Existing Dock/Community Boating Facility), the Association shall be required to name the owner(s) of such Lot as additional insured on all liability insurance policies obtained by the Association.

SECTION 2. Fidelity Bond. The Association may maintain, as a Common Expense paid by all Owners, blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association; provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association. The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a Common Expense.

ARTICLE X
EXISTING PIER AND COMMUNITY BOATING FACILITY

SECTION 1. Existing Pier. As of the date hereof, there exists one pier with one docking space that is attached to Lot 3 of Jacobs Bluff (the "Existing Pier"). Until and unless the new Community Boating Facility is constructed as provided below, then the one docking space on the Existing Pier shall be for the exclusive use of the Owner of Lot 3 (as an appurtenance to such Lot), and the remaining portions of the Existing Pier shall be for the non-exclusive use of all Owners. The costs of maintenance and repair of the Existing Pier and the 10' Pier Access Easement shown on the Plat shall be shared equally by the Owners as a Common Expense.

SECTION 2. Proposed Community Boating Facility. Subject to the approval of the appropriate governmental authorities, the Declarant proposes to build a community boating facility consisting of a fixed pier, gazebo, bulkhead, pilings, gangways, gangplanks, cleats, electrical and water systems, ramp and floating dock with three (3) boat slips each with an electric boat lift and two (2) floating day docks, all as shown on the pier plans attached as Exhibit A and incorporated herein by reference (the "Plans"). The facilities shown on the Plans, together with that 10' Pier Access Easement shown on the Plat shall collectively be referred to herein as the Community Boating Facility". Upon completion of the Community Boating Facility, **Article X, Section 1** shall be terminated and **Article X, Section 3** shall immediately become effective. Nothing in this Declaration shall obligate the Declarant to build the Community Boating Facility.

SECTION 3. Assignment of Boat Slips in Community Boating Facility; Day Docks.

(a) Boat Slips. For purposes of this Declaration, the term "Boat Slip" shall mean a space in and above the water adjacent to Whiskey Creek, New Hanover County, North Carolina, for the docking of a boat as more particularly shown on the Plan, together with the associated electrical boat lifts. A total of three (3) Boat Slips (Boat Slip #1- #3 on the Plans) are constructed as part of the Community Boating Facility and are subject to continuing governmental approval therefor. The Boat Slips are assigned to each of the Lots in Jacobs Bluff as provided in **Section 3(b)** below and the assigned Boat Slip shall remain appurtenant to and shall run with the title to the respective Lot and be for the exclusive use and benefit of the Lot.

(b) Assignment of Boat Slips. Each Boat Slip, including all exclusive rights of use and benefits thereof, is hereby assigned to, made appurtenant to and shall run with the land of the specific Lot as set out below:

Lot 1, Jacobs Bluff :	Boat Slip #1
Lot 2, Jacobs Bluff :	Boat Slip #2
Lot 3, Jacobs Bluff :	Boat Slip #3

In the event an Owner sells his Lot, the Boat Slip shall remain appurtenant to and run with the title to said Lot, and the selling Owner cannot retain title to the Boat Slip or convey it to any party other than the party acquiring the Lot.

(c) Day Docks. For purposes of this Declaration, the term "Day Docks" shall mean the two 6' x 14' Floating Day Docks shown as #4 and #5 on the Plans. The Day Docks are intended for the general use and enjoyment of the Owners as a Common Area, and shall be made available for the non-exclusive use (restricted day docking only) of the Owners and their guests pursuant to such rules and regulations as the Board may determine. The use of the Day Docks shall be limited to a first come-first serve basis with no unattended docking permitted.

SECTION 4. Use and Alteration of Existing Pier and Community Boating Facility

(a) Rules and Regulations. Use of either the Existing Pier or the Community Boating Facility by Owners, their employees, agents and guests shall be subject to such Rules and Regulations as shall be adopted by the Board of Directors. Any such Rules and Regulations cannot violate the terms and conditions of any applicable governmental permits, as may be amended from time to time. The initial Rules and Regulations are attached hereto as Exhibit B and incorporated herein by reference.

(b) Alteration of the Existing Pier and Community Boating Facility. Other than the Declarant's plans to construct the Community Boating Facility in accordance with the Plans, any alterations to the Existing Pier must be approved by the ACC, the ACC being granted the same rights to disapprove alterations as it retains for disapproving original structures as provided in **Article VI** of the Declaration. Once the Community Boating Facility is constructed, any alterations of the plans and specifications of the completed Community Boating Facility must be approved by the ACC. Further, all alterations or modifications of any portion of the Existing Pier or the Community Boating Facility must comply in full with any applicable governmental regulations and all required governmental approvals and permits for any such alteration or modification shall have been obtained.

(f) Lease or Rental of Boat Slips. No portion of the Existing Pier or the Community Boating Facility shall be leased or rented.

SECTION 5. Maintenance, Repairs and Insurance of Existing Pier and Community Boating Facility.

The Existing Pier and the Community Boating Facility, as applicable, shall be maintained, repaired, replaced and managed by the Association and all the costs and expenses therefor shall be Common Expenses payable through Annual Assessments levied in an equal amount per Lot pursuant to **Article IV** of the Declaration. Such Annual Assessments shall be invoiced against each such Boat Slip Owner periodically as established by the Board of Directors according to the budget procedures in **Article IV**, and may be made in advance of incurring such expenses, at the discretion of the Board. The Common Expenses shall include the costs of major repairs of any damage that threatens the structural integrity of the Existing Pier or the Community Boating Facility or that poses a danger to persons or property (following actual notice thereof being given by an Owner), and also shall include the costs of replacement thereof following major damage or destruction.

Notwithstanding the foregoing paragraph, any expenses incurred by the Association because of the actions of one or more Owners or occupants of a Lot, or any of their employees, agents or guests, or because of their failure to act, will be assessed as an Individual Assessment against each such specific Owner and that Owner's Lot.

As required in **Article IX**, the Association shall be responsible for insuring all of the Existing Pier or the Community Boating Facility (as applicable) against loss or damage by fire or other hazards and such other risks, including public liability insurance. Provided however, in the event that the Board reasonably determines that the costs of insuring the Existing Pier or the Community Boating Facility (other than the 10' Pier Access Easement) against loss or damage by fire or other hazards is not reasonably obtainable, then the Board may decide to instead collect reserves each year with the Assessments and/or the Board also may collect Special Assessments for any necessary repairs or replacements. Notwithstanding the foregoing, the Board shall maintain continuous insurance coverage over the 10' Pier Access Easement as required in **Article IX**.