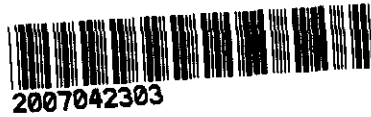


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FOR REGISTRATION REGISTER OF DEEDS
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OCEAN HEIGHTS

Prepared by and Return to:

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2018 Eastwood Road
Suite 225
Wilmington, NC 28403**

**STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER**

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OCEAN HEIGHTS**

THIS DECLARATION, made this 21ST day of AUGUST, 2007 by OCEAN HEIGHTS PROPERTIES, LLC, a North Carolina limited liability company (hereinafter called "the Declarant");

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property in the Town of Carolina Beach, New Hanover County, North Carolina, which is more particularly described on the attached Exhibit A and in Article II herein.

WHEREAS, the Declarant has deemed it desirable for the efficient preservation, protection and enhancement of the values and amenities in Ocean Heights, and to insure the residents' enjoyment of the specific rights, privileges and easements in the Community Common Property and facilities to subject said Property to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth for the mutual benefit of the Declarant and succeeding property owners and desires that said covenants, conditions, restrictions, liens and charges run with the land and be binding upon the Declarant, its successors and assigns;

NOW THEREFORE, the Declarant declares that the real property described in Article II, and such additions and annexations thereto, as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I
DEFINITIONS

The following words when used this Declaration or any Supplemental Declaration or amendment hereto, unless the context shall prohibit, shall have the following meanings:

(a) **“Act”** means and refers to the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes).

(b) **“Association”** shall mean and refer to Ocean Heights Property Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

(c) **“Community Common Property”** or **“Common Area”** or **“Common Property”** shall mean and refer singularly or collectively, as applicable, to all real property and improvements thereon or associated therewith, which is/are owned or leased by, or located in an easement granted to or reserved by, the Association and which has/have been designated by Declarant or the Association as “Community Common Property”, “Common Area”, “Open Space”, “Buffer Yard”, or some other, similarly descriptive term, on a recorded plat, in a Supplemental Declaration, or in a deed or other written instrument, and also shall refer to all personal property owned or leased by the Association and designated as Common Property by the Declarant or the Association. All Common Area or Community Common Property shall be subject to the terms and conditions of this Declaration and the ordinances of the Town of Carolina Beach and/or New Hanover County.

(d) **“Declarant”** shall mean and refer to Ocean Heights Properties, LLC, a North Carolina limited liability company, its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred in whole or in part, and subject to such conditions as Declarant may impose, if such successors or assigns should acquire more than one undeveloped

Lot location for the purpose of development The development of a Lot site shall mean and refer to the construction of a residence thereon.

(e) **“Declaration”** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Properties, and amendments thereto which are recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

(f) **“Development Rights”** means any right or combination of rights reserved by the Declaration (i) to add real estate to the Planned Community; (ii) to create lots, or Community Common Property within the Planned Community; (iii) to subdivide Homesites or convert Homesites into Community Common Property; or (iv) to withdraw real estate from the Planned Community.

(g) **“Lot”** shall mean and refer to any numbered or lettered plot of land shown on any plot including exact metes and bounds descriptions and recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, which is made subject to this Declaration as may be amended.

(h) **“Member”** shall mean and refer to an "Owner" subject to assessment as provided in this Declaration.

(i) **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, that is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(j) **“Planned Community”** means real estate with respect to which any person, by virtue of his/her ownership of a Lot, is expressly obligated by this Declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve or benefit other Lots or other real estate described in this Declaration. The term "Planned Community" is used

interchangeably with the term "Ocean Heights" within this Declaration.

(k) "Properties" shall mean and refer to that certain real property described in Exhibit A, and any annexation thereto.

(l) "Special Declarant Rights" means rights reserved for the benefit of the Declarant that may not be altered by the Members, including, but not limited to rights (i) to complete improvements indicated on plats and plans filed with the Declaration; (ii) to exercise any Development Right; (iii) to maintain sales offices, management offices, signs advertising the Planned Community and models; (iv) to use easements through the Common Area for the purpose of making improvements within the Planned Community or within real estate which may be added to the Planned Community; or (v) to appoint or remove any officers or executive board members of the Association during the period of Declarant control, all of which Special Declarant Rights are more fully set forth herein.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Made Subject To Declaration. The Properties described in Exhibit A hereto and any annexation are hereby made subject to this Declaration and the Properties shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the terms, covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration.

Section 2. Existing Property. The real property which hereby is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in New Hanover County, North Carolina, and is more particularly described in Exhibit A hereto.

Section 3. Mergers. Upon a merger or consolidation of the Association with another organization as provided by its By-Laws, its properties, rights and obligations may be transferred to another

surviving or consolidated homeowner's association or, alternatively, the properties, rights and obligations of another homeowner's corporation may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated homeowner's association may administer the covenants and restrictions established by this Declaration within the Properties, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration within the Properties except as hereinafter provided.

ARTICLE III

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members. Additional lands may be added and annexed to the Properties only if two-thirds (2/3) of the votes entitled to be cast in each class of Members are cast in favor of annexation. A meeting shall be duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days prior to the date of the meeting.

For the purpose of such meeting, the presence of Members or authorizing proxies entitled to cast seventy-five percent (75%) of the votes of each class of Members shall constitute a quorum.

If the required quorum is not present at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation, and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in

writing within one hundred twenty (120) days following the date of the meeting at which he or she is entitled to vote either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by the Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of each class of all votes entitled to be cast, the annexation shall stand approved.

Section 2. Conveyance of Community Common Property. The Declarant will convey any Community Common Property in annexed areas in the same manner and as provided in Article VI, Section 3, herein.

Section 3. Reserved Declarant Rights. The Declarant reserves the following Development Rights: (i) to add real estate to the Properties in accordance with this Article III; (ii) to create Lots; (iii) to add Community Common Property; (iv) to modify or change Lot types; (v) to reallocate Lots within the property; (vi) to withdraw undeveloped real estate from the Properties.

ARTICLE IV

MEMBERSHIP

Every person or entity that is a record owner of a fee or undivided interest in any Lot that is subject to this Declaration to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

ARTICLE V

VOTING RIGHTS: CLASSES OF VOTING MEMBERSHIP

The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all those Owners of Lots with the exception of the Declarant (as defined in this Declaration). Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for Membership in ARTICLE IV. When more than one person holds such interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as the majority of such persons among themselves determine; however, in no event may more than one vote be cast with respect to any one Lot. Fractional voting shall be prohibited. At any meeting of the Members, a representation by any of such persons that a majority of such persons have agreed as to the vote for such Lot shall be conclusive unless another of such persons contests such representation at such meeting prior to the casting of such vote.

Class B. The Class B Member(s) shall be the Declarant (as defined in the Declaration). The Class B Member(s) shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership; but provided that the Class B membership shall be reinstated if thereafter, and before the time stated in Subparagraph (b) below, such additional lands are annexed to the Properties without the assent of Class A Members because of development of such additional lands by the Declarant, as provided for in Article III; or

(b) Ten (10) years following the date of incorporate of the Association.

ARTICLE VI

PROPERTY RIGHTS IN THE COMMUNITY COMMON PROPERTY

Section 1. Owners' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Community Common Property, together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Community Common Property, all of which shall be appurtenant to and shall pass with the title to every Lot and Subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Community Common Property;
- (b) The right of the Associates to suspend the voting rights and right to use the recreational or other Community Common Property facilities by an Owner for any period during which any assessment against his/her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Association to dedicate, sell or transfer all or any part of the Community Common Property, to any public agency, authority, or utility for such purposes, and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of Members and an instrument properly executed by the Association has been recorded. On such instrument, the Secretary of the Association shall certify that two-thirds (2/3) of each class of Members have approved the dedication, sale or transfer and that certificate shall be conclusive as to any grantee or its assigns; provided, however, conveyances for general utility purposes as specified herein may be made without consent of the Members;

The Association, acting through its Board of Directors, from time to time may exchange with Declarant or any Member a portion of the Community Common Property for real property owned by the Declarant or such Member, provided that the exchange is approved by the vote of fifty-one percent (51%) of each class of Members at a meeting of the Members of the Association duly held in accordance with its Bylaws; the property received by the Association shall be of approximately the same size as the portion of Community Common Property exchanged; the property conveyed to the Association is free and clear of all encumbrances except the Declaration and easements for greenway, drainage, utility, and sewer; the requirement that the exchange must be approved by the Planning Director of the Town of Carolina Beach, pursuant to the Town Code of Carolina Beach. Provided, however, where the exchange is done to eliminate an encroachment of a structure into the Community Common Property or to allow the necessary setback between the structure and the property line, the notice and consent provisions hereinabove shall not be required and only the approval of the Board of Directors of the Association shall be necessary. The real property so acquired by the Association shall be a part of the Community Common Property. The portion of the Community Common Property so acquired by Declarant or a Member, shall cease to be Community Common Property and shall be subject to those provisions of the Declaration that were applicable to the properties conveyed to the Association by the Declarant or Member.

The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Community Common Property and facilities and in aid thereof to mortgage said properties, and the rights of such mortgages in said properties shall be subordinate to the rights of the Members hereunder;

(d) The right of the individual Members to the use of parking spaces as may be provided by the Board of

Directors; and

(e) The right of the Association in accordance with its Articles of incorporation or By-Laws to impose rules and regulations for the use and enjoyment of the Community Common Property and improvements thereon, which rules and regulations may further restrict the use of the Community Common Property.

Section 2. Delegation of Use. Except as specifically limited herein, any Owner may delegate, in accordance with the By-Laws, his or her right of enjoyment to the Community Common Property and facilities to the Members of his or her family, his or her tenants, or contract purchasers who reside on the property.

Section 3. Title to the Community Common Property. Declarant shall dedicate and convey to the Association (by deed without warranty at Declarant's option) fee simple title to all real property portions of the Community Common Property to the Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements, other easements and encumbrances, not constituting a lien to secure the payment of money, and mineral interests outstanding and of record in New Hanover County, North Carolina, and the terms and conditions of this Declaration and any applicable supplemental Declaration.

Section 4. Utility Lines. Each Owner, occupant, guest, and invitee acknowledges that neither the Association, if any, nor the Declarant, nor a Builder shall in any way be considered insurers or guarantors of health within the Properties, and neither the Association, if formed, nor the Declarant, nor a Builder shall be held liable for any personal injury, illness or other loss or damage caused by the presence or malfunction of utility lines adjacent to, near, over or on the Properties. Each Owner, occupant, guest and invitee assumes all risk of personal injury, illness or other loss or damage arising from the presence of utility lines and further acknowledges that neither Declarant, nor the Association, if formed, nor a builder have made

any representations or warranties, nor has any Owner, occupant, guest or invitee relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines.

Section 5. Bodies of Water. All bodies of water, including, without limitation, ponds, lakes, storm water detention ponds, wetland, and streams within the Properties shall be accepted by the Association in their original condition and shall serve the Association as aesthetic amenities. Neither the Association nor the Declarant shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any such bodies of water. For this purpose, "wetlands" means any area labeled as wetlands on a recorded plat for the Properties or otherwise designated as wetlands by the Declarant. No Owner, except Declarant, and then the Association, shall have any right to pump or otherwise remove water from, nor to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in, any wetlands, ponds, storm water retention ponds and streams within the Properties. Applicable governmental agencies and the Declarant, so long as the Declarant owns any property subject to the Declaration or has the unexpired right to annex additional property to the Declaration, and thereafter the Association, shall have the sole right to control the water level of any body of water located within the Properties and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any wetlands, ponds, storm water retention ponds and streams within the Properties.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed

to covenant and agree to pay to the Association; (1) annual assessments or charges, and (2) special assessments for extraordinary maintenance and capital improvements, and (3) to the appropriate governmental taxing authority, a pro rata share of assessments against the Community Common Property. The annual and special assessments, together with interest; late fees, and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them.

The Association shall also have the authority, through the Board of Directors, to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration, which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his or her heirs, successors and assigns, to pay each assessment levied by the Association on the parcel described in such conveyance to him within ten (10) days after receipt of an invoice for the same, and further covenants that said charge shall not be paid within thirty (30) days from the date that said invoice is deposited, postage prepaid in the United States mail, in an envelope addressed to such Owner at the address of the parcel or to such other address as said Owner shall have designated, the amount of such charge shall become a lien upon said Owner's parcel and shall continue to be such lien until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties

and in particular for the acquisition, improvement and maintenance of properties, services and facilities, including the private streets, if any, parking areas, and retention ponds, and for the use and enjoyment of the Community Common Property, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Community Common Property, the procurement and maintenance of insurance in accordance with this Declaration, the By-Laws, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. Maximum Annual Assessment. Through and including December 31, 2007, the maximum annual assessment shall be One Thousand Eight Hundred Dollars (\$1,800.00) per Lot.

(a) The maximum annual assessment for the calendar year beginning January 1, 2008 and for successive calendar years thereafter, shall be established by the Board and may be increased by the Board without approval by the membership of the Association by an amount per year not to exceed ten percent (10%) of the amount of the maximum annual assessment of the immediately preceding calendar year.

(b) The maximum annual assessment for the calendar year beginning January 1, 2008, and for each successive calendar year thereafter, may be increased without limit by the affirmative vote of two-thirds (2/3) of the votes of class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting of the Association at which a quorum is present. The provisions of this subsection shall not apply to nor be a limitation upon any change in the maximum annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under this Declaration or its Articles or By-laws.

(c) Subject to the provisions of this Article VII, the Board may fix the annual assessment at any amount not excess of the maximum annual assessment allowed for the applicable calendar year.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Community Common Property, or any extraordinary maintenance of any property for which the Association is responsible, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article 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 the votes of each class of membership shall constitute a quorum. *If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.*

Section 6. Uniform Rate of Assessment. The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant lots and those with completed structures that can be legally occupied, or when any other substantial difference exists between lots. However, Assessments must be fixed at a uniform rate for all lots similarly situated.

Section 7. Procedure for Setting Annual and Special Assessments. The Board of Directors shall