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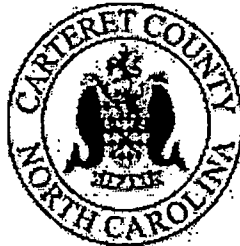
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Karen S. Hardesty

Register of Deeds



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23

of Pages.

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

THIRD AMENDED AND RESTATED
DECLARATION OF COVENANTS
AND RESTRICTIONS – BAY HARBOR VILLAGE
PHASE I AND PHASE II, MAP ONE AND MAP TWO

Map Book 24, Page 115

Map Book 25, Page 35

Map Book 25, Page 52

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL
SIGNS**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS made and entered into this 13th day of April 2024, by BAY HARBOR VILLAGE ASSOCIATION, INC., a North Carolina non-profit corporation.

BACKGROUND STATEMENT

Under the provisions of the original Declaration of Covenants and Restrictions of Bay Harbor Village, (recorded in Book 572 at Page 342 of the Carteret County Registry) as previously amended by that instrument recorded in Book 590 at Page 329 of the Carteret County Registry, and amended again at Book 790 at Page 81 of the Carteret County, the said Declaration of Covenants and Restrictions may be amended by a vote of seventy-five (75%) (13 of 17) percent of members voting either in person or by proxy at a duly constituted meeting of the Association, after due notice. In such a meeting held on the 13th day of April 2024, due notice having been provided, the requisite number of members voted affirmatively to adopt this Amended and Re-stated Declaration of Covenants and Restrictions, effectively as of the date of its adoption. See the Board of Directors certification appended hereto as Exhibit D. To the extent that the original Declaration of Covenants and Restrictions is not amended herein, it is ratified and confirmed. This Amended and Restated Declaration of Covenants and Restrictions shall relate and refer to all Properties identified and described in Exhibits "A", "B", and "C" attached thereto.

ARTICLE ISection 1. Definitions.

- A. "Association" shall mean and refer to Bay Harbor Village Association, Inc., its successors and assigns.
- B. "Building" shall mean any structure built for the support, shelter or enclosure of persons, animals, chattels, or property of any kind which has enclosing walls for fifty percent or more of its perimeters. The term "building" shall be construed as if followed by the words "or parts thereof", including porches, decks, carports, garages, sheds, roof extensions and overhangs and any other projections.
- C. "Lot" shall mean and refer to any individual plot of subdivided land shown upon a recorded subdivision map which is restricted by these covenants, or amendments hereto, to use for detached single-family dwelling, but shall not include any property designated in this Declaration (or amendments) or on a recorded subdivision map, as "Common Area" (but see ARTICLE VIII, below).
- D. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, holding the fee simple title to any lot, situated in the property to which these covenants or amendments hereto, apply, but shall exclude those entities holding interest merely as security for the performance of any obligation.
- E. "Person" shall include any individual, partnership, corporation, trust or other entity.
- F. "Properties" shall mean and refer to all properties which are subject to this Declaration.
- G. "Single-Family Dwelling" shall mean and refer to a building containing one, and only one, living unit.
- H. "Family" shall mean and refer to one person living alone or two or more persons, whether related to each other by birth or not, and having common housing facilities.
- I. "BBA" shall mean and refer to Brandywine Bay Association, Inc., its successors and assigns.
- J. "ACC" shall mean and refer to the Architectural Control Committee.

- K. "Signs" shall mean and refer to objects, including flags that communicate an idea or an event.
- L. "Political Signs" shall mean and refer to any objects, including flags, the intent of which is to influence the outcome of an election, including supporting or opposing an issue on the election ballot.
- M. "Street side" shall mean and refer to the side(s) of a Lot that faces the street but not the water view.
- N. "Marina side" shall mean and refer to the side(s) of a Lot that faces the water view.
- O. "Common Area" shall mean all real property and interests in real property, such as leases and easements, which are owned by the Association for the benefit of the Owners/Members, including such real property and interests in real property as may be hereafter acquired.
- P. "Maintenance of the roadway" shall mean maintenance of our private BHV roads limited to repair and improvement of the road surface and roadbed substrate. Repair or maintenance of drainage ditches and other substructures which are adjacent to or along the roadways are not the responsibility of BHV Association.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. The right of the Association to suspend the voting rights of an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.
- B. The right of the Association to dedicate an easement or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 75% (13 of 17) of each class of membership has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Lot.

ARTICLE III
BAY HARBOR VILLAGE ASSOCIATION, INC.

Section 1. Membership. Each and every person having any fee ownership interest in a Lot to which this Declaration, or amendments hereto, is applicable, shall be a member of the Association, excluding only persons holding such an interest as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration or amendments hereto.

Section 2. Voting Rights. The Association shall have one class of voting members. Members shall be all of those owners defined in Section 1 of this Article. Members shall be entitled to one vote for each Lot owned. When one or more persons own such interest or interests in any Lot, all such persons shall be members and the vote of such Lot shall be exercised as they themselves determine, but in no event shall more than one vote be cast for any Lot.

Section 3. Creation of Lien and Personal Obligation of Assessments. Each owner of any Lot within said property, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

1. Annual Assessments or charges, and
2. Special Assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, cost and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, cost, and reasonable attorney's fees, shall also be their personal obligation of the person or entity who is the owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Any assessment shall be deemed in default if not paid within 30 days of the billing date.

Section 4. Use of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of owners of property to which this Declaration applies, and residents within said property, and for improvement and maintenance of the streets and roads as shown on the plats referenced above.

Section 5. Amount of Annual Assessments. As of January 1st, 2023, the maximum annual assessment is \$131.00 per Lot.

- A. The maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- B. The maximum annual assessment may be increased above five percent (5%) by a vote of 75% (13 of 17) 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 fix the annual assessment at an amount not in excess of the maximum.

Section 6. Special Assessments. 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 cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of 75% (13 of 17) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose. Such special assessments shall also require approval by the Board of Directors by two-thirds vote.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. The annual assessment shall commence for a Lot on the date of recordation of this Declaration, or amendments hereto, which makes the said Lot subject to this Declaration. Written notice of the annual assessment shall be sent to every owner subject thereto. Provided, however, that when there is more than one owner for a Lot, it shall be sufficient that notice be sent only to one. The due dates for assessments shall be established by the Board of Directors. The Association shall, upon demand, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Non-Payment of Assessments. Any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight (8%) percent per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot 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 assessment thereafter becoming due or from the lien thereof.

Section 10. Enforcement of Lien. Enforcement of lien referenced above shall be by foreclosure in like manner as foreclosure of a deed of trust as described in Chapter 45 of the North Carolina General Statutes. The provisions therein for hearing, notice of hearing and publishing of notice of sale shall be complied with, as they may exist at the time of the foreclosure. The Association is hereby granted, and each owner, by acceptance of a deed, grants to the Association of power of sale for purposes of foreclosure to enforce the aforesaid lien.

ARTICLE IV RESIDENTIAL SINGLE FAMILY USE

These restrictions shall apply to the property described in Exhibit A, attached hereto and to all property to which this Declaration, or amendments hereto, apply and to which a designation of “residential, single family” is made by Declaration or amendments hereto.

Section 1. Residential Use. All Lots designated “residential, single family” shall be restricted as to use for residential, single-family dwellings. No building shall be erected or permitted to remain on any Lot other than one, detached single family dwelling not to exceed two and one-half stories in height and a private garage.

- A. Noise. Between 11 pm and 8 am the following day, noise is to be kept to a level that does not disturb the quiet enjoyment of their Lot by other Members. Regardless of the hour, no Owner will permit noise to unreasonably disturb other Owners.
- B. Noxious Activities. 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.

- C. Lot Maintenance. If, in the opinion of the Board of Directors, an Owner fails to maintain his property in a neat and orderly condition or otherwise neglects his property and allows unsightly conditions to develop, the Board of Directors, after ten (10) days written notice to the Owner, may, but is not obligated to, take steps to remedy the problem. Such remedy may include but shall not be limited to: the removal of debris, the mowing or grass or cutting of brush and the painting or repair of structures located on the Lot. The Board of Directors will bill such Owner for all expenses incurred in correcting the problem. Every Owner by acceptance of this deed covenants is obligated to pay said bill. Upon failure to pay said bill, the Board of Directors may file a lien against said property and enforce said lien by action at law.
- D. Lighting. No exterior lighting, such as flood lighting, motion sensors, and entrance lighting, shall be directed away from the Owner's Lot toward another Owner's Lot. Any exterior lighting that results in an adverse visual impact to adjoining neighbors due to location, wattage or other features shall be redirected by the Owner. No exterior-colored lights are permitted, except temporary holiday displays that must be removed in a reasonable time after the date of the holiday.

Section 1.1. Rental Use. Single family dwellings may not be rented on less than a month-to-month basis. Owners as well as tenants shall be liable for damages to Members' property caused by their tenants. No short-term or vacation rentals shall be allowed.

Section 2. Dwelling Size. The minimum space requirement for residences on the property shall be 2000 square feet, exclusive of carports, garages and porches.

Section 3. Setbacks. No building shall be erected or allow to remain on any of the Lots in the subdivision which is located nearer the Lot boundary line than the minimum setback line shown or described on the recorded plat. Provided, however, that notwithstanding the minimum setback shown on the recorded plat for Lots 1 and 2, Phase II, Map One, the minimum setback from the south line of said Lots shall be fifty (50) feet, rather than the footage shown on said plat; and provided further, that supplemental set-back lines may be established by the Architectural Review Committee as more fully set out in Article V. 3, below.

Section 4. Member's Boats, Trailers, and RVs. Member's Boats, Trailers, and RVs (motor homes, travel trailers, campers) shall not be parked on any Lot for longer than two weeks unless in an enclosed garage. The intent of this section is to allow for short term maintenance of Owner's Boats, Trailers, and RVs. The Board of Directors is authorized to make exceptions for extenuating circumstances.

Section 5. Signs, including Political Signs and Flags.

- A. No signs, including political signs, or billboards of any kind shall be erected or allowed on any Lot other than a "For Sale" or "For Rent" sign not larger than two (2) feet by (2) feet. "For Sale" or "For Rent" signs shall be removed upon completion of sale or rent transaction.
- B. Flags. Political flags are not permitted. Flags and flag sizes on flagpoles must be ACC approved. The ACC will comply with NCGS 47F-3-121 (American and State flags and political sign displays). No more than three (3) flags may be displayed on any flagpole. (Flag displays erected before this amendment are grandfathered).

Section 6. Redivision of Lots. No Lot or Lots shall be divided or resubdivided unless such division or resubdivision yields a total number of Lots which is less than the total number of Lots prior to division or resubdivision as shown on the recorded plat. In no event shall any building be erected, placed or allowed to remain on any building site which has an area of less than 15,000 square feet. Provided, however that there shall be allowed on subdivision of Lot 1, Phase 1 (Map Book 24, Page 115, Carteret County Registry) into two Lots, each having at least 15,000 square feet. There shall be allowed combination of more than one Lot as one building site, upon designation of intent so to do the Association, in writing, of the Owner of the Lots to be so combined. In such event, the side setbacks on the common line between the Lots to be so combined shall not apply. Further, in the event such combination occurs and Owner of such Lots constructs a dwelling utilizing both Lot, and in the event Owner of such combined Lots causes to be prepared, executed and recorded a covenant, running in favor of the Association precluding any subdivision of the combined, new Lot, then, and in such event, effective at the beginning of the fiscal year immediately following the date of recording of such covenant, the combined Lots shall be treated as one Lot for purposes of assessments and voting rights.

Section 7. Easements. Declarant hereby reserves an easement or right of way for purposes of installation of water lines, sewer lines, telephone lines, electric lines, cable tv lines, poles, wires, cable and all other equipment necessary for the installation, use and maintenance of utilities, including water, sewer electricity, telephone, and drainage. Said easement shall be five (5) feet in width along each and every property line which abuts a road right of way as shown on the appropriate recorded plat.

Section 8. Temporary Structures and Trailers. No trailer, mobile homes (specifically including "double wide mobile homes"), nor any shed, tent, shack, barn or other out-building shall be erected or placed on any Lot except that a trailer for construction or outbuilding used in conjunction with construction may be used during construction on a limited, temporary basis. Provided, however, that there shall be allowed one "gazebo" type outbuilding on the lower

portion of Lot 1, Phase 1. Said gazebo may be roofed but shall not be enclosed. Further, the design and location thereof shall be subject to approval of the architectural control committee.

Section 9. Animals. No animals, livestock, or poultry of any kind other than house pets shall be kept or maintained on any part of said property. No permitted animals shall be kept, bred, or maintained for any commercial purpose. All dogs shall be on a leash when off the premises of the owner.

Section 10. Waste. The disposal of waste matter, including garbage, refuse, etc., shall be in compliance with the regulations of the State Board of Health of North Carolina, the Board of Health of Carteret County and all other governing authorities which have jurisdiction thereover. It is expressly prohibited that any rubbish, garbage, etc., be placed or permitted to drain into any of the drainage areas. All living units shall be equipped to contain an accepted garbage disposal system. All exterior garbage cans shall be placed and/or screened in such a manner so as not to be visible from adjacent properties. All exterior rubbish, trash, organic clippings, garbage or other waste shall be kept in properly secured garbage cans.

Section 11. Storage. To preserve the remarkably clean appearance of our community, visible exterior storage of personal property longer than 2 weeks is subject to approval of the Board of Directors. Personal property items are to be stored within enclosed areas.

Section 12. Tanks. Fuel oil tanks, if applicable, shall be buried, placed in the basement of dwelling house, or enclosed in such a manner that they will not be visible and such that a harmonious blending of the structure with the dwelling house shall be effectuated.

Section 13. Fences. No "chain link" fences shall be allowed, nor shall any fence be constructed on a Lot unless same shall have been approved by the ACC.

Section 14. Existing Improvements. Existing Improvements on Lot 1, Phase I (Map Book 24, Page 115) and Lot 4, Phase II, Map One (Map Book 25, Page 35) may not comply, in all respects, with the terms hereof. To the extent that such improvements on those specific Lots are not in compliance herewith, the terms hereof are waived. Replacement of those existing improvements is specifically allowed.

ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

Section 1. General. There is hereby created an Architectural Control Committee ("ACC") for Bay Harbor Village at Brandywine Bay. Said committee shall consist of three (3) members. All members of the ACC shall be appointed by the Board of Directors from the

membership of the Association. A majority of the ACC shall be deemed a quorum, and decisions of the ACC shall be by simple majority vote.

Section 2. Submission of Plans. No person shall commence construction or placement of any fence, building, free-standing flagpole, or any other structure, until plans for same shall have been approved by the ACC as provided herein. All plans and specifications must receive approval by the ACC prior to application for a building permit. The submissions shall show by plot plans, elevations, and perspective sketches all proposed improvements including locations, architectural features and landscaping in the event said committee fails to act on a submission within thirty (30) days after sufficient plans have been submitted to it, this Article will be deemed to have been fully complied with. All plans shall be prepared in a professional manner. Members are responsible for obtaining any required permits prior to commencement of construction. Any construction being performed by a contractor requires said contractor to be licensed by the State of North Carolina.

Section 3. Approval. The ACC will review and shall approve the plans and specifications if the proposed improvements meet all of the requirements of these covenants, and if, in its opinion, are appropriate. The ACC will, as part of evaluating the plans, solicit comments on the proposed improvements from the immediately adjacent neighbors. Notwithstanding any other provisions of this Declaration of Covenants and Restrictions, the ACC may reject any proposed improvements if, in its opinion, such proposed improvements are inappropriate for Bay Harbor Village or not in the best interests of all owners within the subdivision.

However, a decision of the ACC rejecting a proposed improvement may be appealed by the owner directly to the Membership of the Association. The members will approve or disapprove the ACC's decision by majority vote of all members (9 of 17), as provided elsewhere in the Declaration. Such an appeal must be noticed in writing within thirty (30) days of notification of the adverse decision, both dates established by the postmark on the notification or time-stamp of the email. If no appeal is noticed as set forth above, it will be deemed a waiver of appeal and an acceptance of the ACC's decision. If a timely appeal is noticed as set forth above, the ACC will request the Board of Directors to notice and convene a meeting of the Membership of the Association for the purpose of consideration of the appeal. Such meeting is to be held, and a decision rendered, within sixty (60) days of notification of the timely appeal, both dates as established by postmark on the notification or time-stamp of the email.

The ACC shall review, in particular, location of any proposed improvements, to ensure, insofar as possible, that location of structures does not interfere unreasonably with the view from other Lots. To that end, the ACC shall have the express authority to establish supplemental set-back lines when minimum set-back lines as shown on the plat of the subdivision do not

effectively prevent unreasonable interferences with the view from other Lots. By acceptance of a Deed, purchasers agree that the actions of the ACC, unless reversed by majority vote of the Membership of the Association, are in the best interests of all owners within the subdivision and that they will abide by the decisions of the committee. The ACC or other owners may seek injunctions to compel compliance with ACC decisions, or damages resulting from failure to act in accordance with direction of the ACC.

Section 4. Architectural Standards. Tract owners, parcel owners, Lot owners and all subsequent owners agree that the desired level of architectural quality of the entire property shall be consistently maintained, and each building or structural element shall be compatible with its natural surroundings, adjacent existing structures.

Section 5. Site Standards. Tract owners, parcel owners, Lot owners and all subsequent owners agree to leave all vegetation, trees, brooks, creeks, hillsides, springs, water courses, and ravines in as near their natural state as is compatible with reasonable building and land use practices.

Section 6. Completion of Construction. Construction of any dwelling or other structure on property to which these restrictions, or amendments hereto, apply must be completed within twelve (12) months after commencement of construction. Any longer period of construction must be approved by the Board of Directors. For purposes of this section, commencement of construction shall be deemed to be the first day on which materials are delivered to the site or labor commences with respect to said construction, whichever date shall occur first.

ARTICLE VI UTILITIES, ROADWAYS

Declarant covenants that either public or private water and sewer services will be available to purchasers of property to which these covenants, or amendments hereto, apply and that such service will be sufficient to serve all Lots. Purchasers of property, by acceptance of a deed, agree to pay rates established by the proper authorities for the use of the services, specifically including, but not limited to, "tap fees" and periodic user charges. Individual wells are prohibited except as used for swimming pools, landscape maintenance or air temperature control. The sewer system is what is known as a "low pressure" system which shall require installation of tank and pump for each residence, installation and maintenance for which shall be the responsibility of the owner of each residence. Individual septic tank disposal systems shall not be used.

Maintenance of the roadway within Phases I and II shall be the sole responsibility of the Association and shall be paid as part of the common expenses of the Association. This shall include the east/west roadway from Brandywine Marina Drive to the marina, the roadway running south from the east/west roadway, into the subdivision, to the east line of Lot 2, Phase II, Map One (Map Book 25, Page 35, Carteret County Registry), and the roadway running southeast from Core Drive West, into the subdivision, to the west line of Lot 15 Phase II, Map Two (Map Book 25, Page 52, Carteret County Registry). Provided, however, that the Association shall be entitled to contributions from Brandywine Marina Association, Inc. for one-half (1/2) of all costs of maintenance and repair of the east-west roadway running from the marina to Bay Drive. These roadways are for BHV members and guests to access their properties.

ARTICLE VII
BRANDYWINE BAY ASSOCIATION

With respect to the Brandywine Bay Association, Declarant, by this Declaration, and all Owners, by acceptance of their deed, covenant and agree as follows:

Section 1. Automatic Membership. All Owners shall automatically be Members of the Brandywine Bay Association and shall enjoy the privileges and be bound by the obligations contained in said Association's Articles of Incorporation, By-Laws and Rules and Regulations, subject to:

- (i) The right of said Association to charge reasonable fees for the use of any facilities situated upon its property;
- (ii) The right of said Association to suspend the voting rights and the right to use any facilities situated upon its property by a member for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (iii) The right of said Association to dedicate or transfer all or any part of its 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 an instrument or instruments signed by two-thirds of each class of members, agreeing to such dedication or transfer, has been recorded (such instrument or instruments may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and same instrument);

- (iv) The right of said Association to limit the number of guests of members as to the use of any facilities situated upon said Association's property;
- (v) The right of said Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving its property and facilities and in aid thereof to mortgage and grant liens and encumbrances upon said property and facilities, provided that the rights of any mortgages of said Association's property and facilities shall be subordinate to the rights of the members hereunder.
- (vi) The right of said Association, through its Board of Directors, to determine the time and manner of use of any of the facilities situated upon its property by its members;
- (vii) The right of said Association to reasonably regulate, locate and direct access routes on its property and the location of parking thereon. Membership in the Brandywine Bay Association shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Covenant for Assessments. Each Owner of a Lot subject to this Declaration, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to Brandywine Bay Association: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provide all such annual and special assessments, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge and lien upon the Lot of the respective Owners thereof, and the same shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interests, costs, and reasonable attorney's fees for the collection thereof, shall also be a personal financial obligation of the person, or persons, who was, or were, the Owner or Owners of such Lot at the time when the assessment became due. All sums assessed by the Brandywine Bay Association but unpaid for the share of the common expenses chargeable to any Lot shall constitute a lien on such Lot prior to all other liens except (i) ad valorem tax liens and liens for special assessments on the Lot made by a lawful governmental authority, (ii) all sums unpaid on the Institutional Mortgage of record on such Lot, if any, and (iii) other liens, if any, having priority of statutory authority.

Section 3. Purpose of Assessments. The assessment levied by the Brandywine Bay Association shall be used exclusively to provide for necessary insurance coverage, reserve fund for replacements, maintenance and operation of its facilities and to promote the recreation, health, safety and welfare of the members.

Section 4. Amount of Annual Assessments. Current assessment rates are as follows:

- a. Unimproved Lot - \$189.00/year, payable \$15.75 monthly
- b. Improved Lot - \$378.00/year, payable \$31.50 monthly

The assessment amounts are subject to change, by vote of the Board of Directors and/or the membership, pursuant to Articles of Incorporation of BBA and By-Laws (see Corporate Book 9, Page 242, Carteret County Registry).

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Brandywine Bay 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 cost of any construction, reconstruction, repair or replacement of a capital improvement, including (but not limited to) fixtures and personal property related thereto or the expense of any other contingencies; provided that any such assessment shall have the assent of two-thirds of the votes of each class of members of said Association who are voting in person or by proxy at a meeting duly called for such purposes.

Section 6. Reserve Funds. The Brandywine Bay Association has established, or shall establish and maintain, a reserve fund or funds for replacement and maintenance of its property and by allocation and payment monthly to such reserve fund or funds in such amounts as are established from time to time by the Board of Directors of the Brandywine Bay Association.

Section 7. Notice and Quorum Requirement. Written notice of any meeting called for the purpose of taking any action authorized in this Article VII shall be sent to all members of the Brandywine Bay Association not less than seven (7) 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 sixty (60%) percent of all the votes of each class of membership in said Association 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 of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the date set for the preceding meeting.

Section 8. Certificate as to Payment. BBA shall, upon demand, furnish a certificate signed by an officer of said Association setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of the assessment therein stated to have been paid, as to any purchaser or mortgagee of a Lot who relies thereon.

Section 9. Effect of Non-Payment of Assessments: Remedies of the Brandywine Bay Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from and after the due date at the rate of six percent (6%) per annum, and the Brandywine Bay Association may bring an action at law against the member personally obligated to pay the same or foreclose the lien against the Lot, and interest, costs, and reasonable attorney's fees of any such action for collection thereof shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, thereby expressly grants to and vests in the Brandywine Bay Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges and liens as a debt and to enforce the aforesaid charge and lien by all methods available for the enforcement of such liens including foreclosure by an action brought in the name of said Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner expressly grants to said Association a power of sale in connection with any such charge or lien. The lien provided for in this Section 9 shall be in favor of said Association and shall be for the benefit of all other members. Said Association, acting on behalf of the members, shall have the power to bid on a Lot foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. **NO MEMBER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE BRANDYWINE BAY ASSOCIATION'S PROPERTY OR FACILITIES OR ABANDONMENT OF HIS LOT.**

Section 10. Subordination of the Assessment Lien to Mortgages, Deeds of Trust and Similar Security Interests. The lien of the assessments provided for in this Article VII shall be subordinate to the lien of any Institutional Mortgage on any Lot and subordinate to tax liens and special assessments on the Lot made by a lawful governmental authority and other liens granted priority by statutory authority. Sale or transfer of any Lot shall not affect the assessment lien. However, where the mortgagee of an Institutional Mortgage or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of an Institutional Mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments of the Brandywine Bay Association chargeable to such Lot which became due prior to the acquisition of title to such Lot as a result of foreclosure by such acquirer. Such unpaid shares of common expenses or assessments shall be deemed to be common expenses collectible from all members of the Brandywine Bay Association including such acquirer, his heirs, successors and assigns. No such sale of a Lot shall relieve such Lot (or its Owner) from liability for any assessments thereafter becoming due and payable or from the lien of any subsequent assessment.

Section 11. Insurance: Insurance Assessments. The Board of Directors of the Brandywine Bay Association or its duly authorized agent shall have the authority to and shall obtain insurance for all the buildings and improvements owned by said Association against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering its property and facilities, and all damage or injury caused by the negligence of said Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be an expense of said Association. All such insurance coverage shall be written in the name of said Association as Trustee for each of the Owners. In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of said Association, the Board of Directors shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provisions agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third of the members of the Board of Directors, or by an agent duly authorized by said Board of Directors. The Board of Directors may advertise for sealed bids with any licensed contractors and they may negotiate with any contractor, who shall be required to provide full performance and payment bond for the repair, reconstruction or rebuilding of such damaged or destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the cost of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all members of the Association, to make up any deficiency for repair or rebuilding of this property and facilities.

Section 12. Disclaimer. THE PROPERTY AND FACILITIES OF BRANDYWINE BAY ASSOCIATION HAVE NOT BEEN SUBMITTED TO THIS DECLARATION BY DECLARANT, AND THE SAME SHALL NOT BE CONSIDERED AS A PART OF THE LOT OF BAY HARBOR VILLAGE AT BRANDYWINE BAY, OR THE COMMON AREA OF BAY HARBOR VILLAGE AT BRANDYWINE BAY.

ARTICLE VIII

CHANGE IN LOTS 1 AND 2, PHASE II, MAP ONE

The recorded plat for Phase II, Map One (Map Book 25, Page 35) shows a "10' Common Area" at the south end of Lots 1 and 2. That designation is in error and, to the extent that dedication as common area of said property is made by that map, that dedication is hereby withdrawn, and that area is a part of Lots 1 and 2. Hereafter, the designation "Lot 1, Bay Harbor Village, Phase II, Map One" shall include all of that portion of property shown as "10' Common

Area” and described on Exhibit B, attached hereto. Further, the designation “Lot 2, Bay Harbor Village, Phase II, Map One” shall include all of that portion of property shown lying south of Lot 2 and described on Exhibit C, attached hereto.

ARTICLE IX
GENERAL PROVISIONS

Section 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, or amendments hereto. Failure by the Association or by any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 1.1. Rules and Regulations. The Association, acting through its Board of Directors, shall have the authority to adopt and publish reasonable Rules and Regulations implementing the provisions of this Declaration, as they may apply to specific acts or omissions of owners which infringe on the rights of other owners, singly or collectively. Any rules and/or restrictions proposed by the Board of Directors or member(s) that are in addition to the adopted covenants and restrictions must be adopted by 75% (13 of 17) vote of the membership and published to all members. In accordance with the North Carolina Planned Community Act (NCGS 47F-3-102 (12)), such Rules and Regulations may be enforced by an action at law by the Association, after due notice and an opportunity to be heard at a hearing by the Board of Directors, by the levying of reasonable fines not to exceed \$100 per occurrence. Any such fine or fines may be appealed to the full membership of the Association at a regular annual meeting or at a special meeting called for that purpose.

Section 1.2. Association Oversight. A decision of the Board of Directors enforcing these covenants may be appealed by the owner directly to the Membership of the Association. The members will approve or disapprove the Board of Director’s decision by majority vote of all members (9 of 17), as provided elsewhere in the Declaration. Such an appeal must be noticed in writing within thirty (30) days of notification of the adverse decision, both dates established by the postmark on the notification or time-stamp of the email. If no appeal is noticed as set forth above, it will be deemed a waiver of appeal and an acceptance of the Board of Director’s decision. If a timely appeal is noticed as set forth above, the Board of Director’s will provide notice and convene a meeting of the Membership of the Association for the purpose of consideration of the appeal. Such meeting is to be held, and a decision rendered, within thirty (30) days of notification of the timely appeal, both dates as established by postmark on the notification or time-stamp of the email.

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, 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. This Declaration may be amended by vote of seventy-five (75%) (13 of 17) percent of each class of members voting either in person or by proxy, at a duly constituted meeting of the Association, after due notice. Upon such vote, the amendment shall be signed by the appropriate officers of the Association. Thereafter, said amendment shall be recorded and shall be effective as of the date of recording. Recordation of an amendment signed by the officers of the Association and recorded as herein provided shall be conclusive evidence that all the provisions of this Section 3, with respect to amendment, have been complied with. Provided, further, however that no amendment shall be allowed with respect to the matters contained in Article VIII hereof without joinder, in any such amendment, by the then owner of Lots 1 and 2, Phase II, Map One, as described in said Article III.

Section 4. Covenants as Appurtenant to Real Estate. All of the land constituting Bay Harbor Village as defined in Exhibit A hereto shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions contained in this instrument, which are for the purpose of protecting the land and the desirability of, and which shall run with, the real property and be binding on all parties having an interest therein.

Section 5. Notice. Whenever this Declaration or the Bylaws of the Association require the giving of notice to an Owner or Member, notice is sufficient where the Association either personally delivers notice to the Owner/Member, by mailing (postage prepaid), or electronically transmitting a copy of such notice, at least 30 days before such meeting or event to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purposes of notice.

Section 6. Voting. Votes may be submitted to the Association either (i) by personal delivery to the Secretary of the Association; (ii) by mailing, first class with postage prepaid, to Secretary of the Association at the address listed in the notice, or (iii) via electronic mail to the email address of the Secretary of the Association.

EXHIBIT A TO DECLARATION

Being all of Bay Harbor Village, Phase I (Map Book 24, Page 115), Phase II, Map One (Map Book 25, Page 35) and Phase II Map Two (Map Book 25, Page 52) Carteret County Registry.

All numbered Lots shown on the above referenced plats are hereby designated single family residential.

EXHIBIT B TO DECLARATION

Property constituting a portion of Lot 1, Bay Harbor Village, Phase II, Map One:

Beginning at a point which is located S 28-55-34 W, 187.17 feet from the northeast corner of Lot 2, Bay Harbor Village, Map One (Map Book 25, Page 35, Carteret County Registry); from said beginning point S 73-20-24 E, 113.80 feet to a point; thence S 28-55-34 W, 10.23 feet to a point in the mean highwater mark of Bogue Sound; thence, with the mean highwater mark of Bogue Sound N 73-20-24 W, 113.80 feet to a point; thence N 28-55-34 E, 10.23 feet to a point, the point of place of beginning.

EXHIBIT C TO DECLARATION

Property constituting a portion of Lot 2, Bay Harbor Village, Phase II, Map One:

Beginning at a point which is located S 28-55-34 W, 187.17 feet from the northeast corner of Lot 2, Bay Harbor Village, Map One (Map Book 25, Page 35, Carteret County Registry); from said beginning point N 73-20-24 W, 110.48 feet to a point; thence N 55-00-16 W, 10.18 feet to a point; Thence S 24-17-35 W, 24.78 feet to a point in the mean highwater mark of Bogue Sound; thence, with the mean highwater mark of Bogue Sound the following three (3) courses and distances:

1. S 68-35-49 E, 34.13 feet to a point;
2. N 62-49-06 E, 20.46 feet to a point;
3. S 73-20-24 E, 72.50 feet to a point;

thence N 28-55-34 E, 10.23 feet to a point, the point of place of beginning.

EXHIBIT D TO DECLARATION

IN WITNESS WHEREOF, the Association has caused this instrument to be executed by its duly-elected officers, by direction of the Board of Directors, the day and year first above written.

BAY HARBOR VILLAGE ASSOCIATION, INC

BY: *Diana L. Snow*

Diana Lynn Snow, President

Diane Albany

Diane Albany, Secretary

K Zieleck

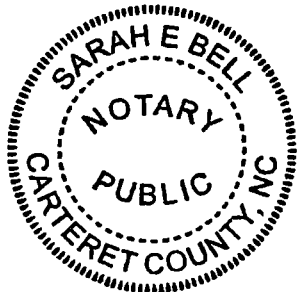
Kenneth Zieleck, Treasurer

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, a Notary Public of the aforesaid County and State, do hereby certify that Diana Lynn Snow personally came before me this day and acknowledged that on April 13, 2024, she was President of BAY HARBOR VILLAGE ASSOCIATION, INC, a North Carolina corporation and signed the foregoing instrument.

Witness my hand and official stamp or seal, this 29th day of April, 2024.



Sarah E Bell

Notary Public

My Commission Expires: 3.21.29