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**Amended And Restated Declaration
Of Covenants, Conditions And Restrictions
For Figure Eight Island**

Adopted By The Owners On June 15, 2020

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NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

NC FEE \$2818.00

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR FIGURE EIGHT ISLAND**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE
FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH
CAROLINA. THE DISPLAY OF FLAGS IS REGULATED BY SECTION 12.8
OF THIS DECLARATION.**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF
POLITICAL SIGNS. POLITICAL SIGNS OF ANY KIND ARE PROHIBITED
ON ANY LOT.**

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AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
FIGURE EIGHT ISLAND

THIS AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR FIGURE 8
ISLAND ("Declaration") is made this 16th day of June, 2020, by
FIGURE "8" BEACH HOMEOWNERS' ASSOCIATION, INC., a North Carolina
nonprofit corporation ("Association").

RECITALS:

A. The Island Development Company caused to be recorded the Declaration of Restrictions Island Development Company in Book 789, at Page 358 in the office of the Register of Deeds of New Hanover County ("Restrictions") in connection with the development of Figure 8 Island. The Restrictions were subsequently amended and supplemented several times.

B. The Association caused to be recorded the Amended and Restated Declaration of Restrictive Covenants Figure Eight Island in Book 5012, Page 74 in the office of the Register of Deeds of New Hanover County (the "2006 Declaration"). The 2006 Declaration restated and replaced the Restrictions, as amended and supplemented.

C. Pursuant to Section 18 of the 2006 Declaration, the 2006 Declaration may be amended by an instrument signed by a majority of the Lot Owners and recorded the office of the Register of Deeds of New Hanover County.

D. This Declaration has been approved by the Association and a majority of the Lot Owners as set forth herein.

NOW, THEREFORE, the Association hereby covenants and declares on behalf of itself and its successors and assigns that the 2006 Declaration is hereby amended and restated in its entirety. The real estate previously made subject to the 2006 Declaration from the date this Declaration is recorded in the office of the Register of Deeds of New Hanover County shall be held, conveyed, acquired and encumbered subject to the terms and provisions hereof, all of which shall run with the real estate and bind and inure to the benefit of all current owners and prospective purchasers and parties who have or may acquire any right, title, estate or interest in or to any of such real estate or who have or may acquire any right or occupancy of or interest upon any portion thereof, all subject to the right of the Association to amend this Declaration according to its terms.

Article 1. Amendment and Restatement of 2006 Declaration. The 2006 Declaration is hereby amended to delete and rescind the 2006 Declaration as

amended and supplemented in its entirety, and to adopt in its place instead this Declaration

Article 2. Definitions.

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

2.1 "Articles of Incorporation": The Articles of Incorporation of Figure "8" Beach Homeowners' Association, Inc., as filed with the North Carolina Secretary of State.

2.2 "Assessment": Assessments levied on Lots to fund the Common Expenses.

2.3 "Association": Figure "8" Beach Homeowners' Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

2.4 "Association Documents" Collectively, the Articles of Incorporation of the Association, the Bylaws of the Association, this Declaration, the Rules and Regulations, and any adopted resolution by the Board, all as may be amended, restated, and revised from time to time. Any exhibit, schedule, or amendment to an Association Document shall be considered a part of that document.

2.5 "Beach Access": Those tracts of real property owned by the Association that extend from other Common Elements to the beach and that are used to allow Members, Owners, guests, and invitees to access the beach.

2.6 "Benefited Assessment": Assessments levied under Section 10.3.

2.7 "Board of Directors" or "Board": The body responsible for administration of the Association selected as provided in the Bylaws.

2.8 "Business and Trade": Shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

2.9 "Bylaws": The Bylaws of the Association as they may be amended from time to time.

2.10 "Cast a ballot": This phrase shall mean voting for or against the proposed action or for or against a candidate or slate of candidates. It does not include any abstention or the presentation of any empty ballot or ballot marked to reflect an abstention.

2.11 "Common Elements": All real and personal property in which the Association now or hereafter owns, leases or otherwise holds possessory or use rights for the common use and enjoyment of the Owners, including easements held by the Association for those purposes. The term shall include, without limitation, signage and/or landscape easements as the same may be depicted on recorded maps of the Property, other easement rights held by the Association, landscape medians, roads, bridges, cul-de-sac, streams, walks, Beach Access tracts, boat ramp property and improvements, submerged lands, bottom lands, swamps, marshlands, wetlands and preservation areas. The term shall also include any and all permits and other such intangible property. Common Elements shall not include (i) any Lot owned by the Association; and (ii) any tract or parcel of real property, other than a Lot, that the Association acquires or holds an ownership interest in, when the Association, or the grantor deeding such real property or interest therein to the Association, expressly provides in a recorded instrument with the New Hanover County Register of Deeds shall not be a part of the Common Element; PROVIDED, HOWEVER, that the Association, by action of the Board of Directors, may designate or declare a Lot or any tract or parcel of real property to be Common Element at any time upon recording a written instrument with the New Hanover County Register of Deeds making such designation or declaration as Common Element. The tract of real property owned by the Association bearing New Hanover County PIN R04500-005-001-001 and consisting of 858.12 acres, more or less, is not Common Element and shall not be part of the Common Elements unless the Association subsequently records a written instrument as described above.

2.12 "Common Expenses": Any and all expenditures made by or financial liabilities and obligations of the Association, together with any allocations to reserves.

2.13 "Community-Wide Standard": The standard of conduct, upkeep, or other activity generally prevailing throughout the Property or as otherwise established by the Board of Directors or Architectural Review Committee, with the determination of the Board or ARC having precedence over what may be generally prevailing. The standard shall be determined by the Board of Directors and the Architectural Review Committee (as defined in Section 11.2(a)). The standard may contain both objective and subjective elements, and may evolve and change as development progresses and as the needs and desires within the Property change. No other writing is required for the establishment of this Community-Wide Standard, as it is determined based on the Association Documents and determinations of the Board of Directors and the Architectural Review Committee.

2.14 "Contiguous Property": Any property of which a portion adjoins or borders the Property or which is separated from the Property only by roads, rights-of-way, waterways, or natural boundaries.

2.15 "Declaration": This Declaration, any Supplemental Declaration as may be applicable to separate portions of the Property, any exhibit, schedule or amendment thereto, all as may be amended, restated and revised from time to time.

2.16 "Design Guidelines": The architectural, design, development, and other guidelines, practices, standards, controls, and procedures, including, but not limited to, application and review procedures adopted pursuant to Article 11 and applicable to the Property. The Design Guidelines are part of the Rules and Regulations of the Association, and they also may be titled or known as "ARC Guidelines."

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

2.18 "Immediate Family Member": A Person related to a Member or Owner as identified in the Rules and Regulations.

2.19 "Island Administrator": The chief executive officer of the Association who is hired as an employee of the Association by the Board.

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

2.21 "Limited Common Elements": A portion of the Common Elements allocated by this Declaration or by operation of law for the exclusive use of one (1) or more but fewer than all of the Lots. Limited Common Elements may also be shown on any map of the Project recorded in the Register of Deeds. At the time of recording of this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Figure Eight Island, no Limited Common Elements exist on the Property.

2.22 "Lot": A portion of the Property, whether improved or unimproved, other than Common Elements and property dedicated to the public, which may be independently owned and conveyed and which is separately identified on a map of all or any portion of the Property recorded in the Register of Deeds. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon, including, but not limited to, the Dwelling Unit.

For all purposes set forth in the Association Documents, a Lot comes into existence on the later of recordation in the Register of Deeds of (i) a map or plat depicting said Lot or (ii) a Supplemental Declaration defining and subjecting the proposed Lot to the same and this Declaration. A Lot remains a "Lot" as defined herein upon acquisition (through foreclosure or otherwise) by the Association unless, and at such time as, a written instrument is recorded by the Association designating and establishing the Lot as a part of the Common Elements.

2.23 "Member": An approved Person having membership in the Association consistent with Section 4.2 of this Declaration.

2.24 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

2.25 "Mortgagee": A beneficiary or holder of a Mortgage.

2.26 "Owner": One or more Persons who hold the record title to any Lot, except Persons holding an interest merely as security for the performance of an obligation in which case the equitable owner shall be considered the Owner.

2.27 "Person": A natural person, corporation, limited liability company, partnership, trust, or any other legal entity.

2.28 "Project": The Figure Eight Island development located on the Property, all of the Property, all Common Elements, all assets of Figure "8" Island Utility Company, any easements providing vehicular access or allowing utility access to the Property, and any real or personal property owned by the Association located outside of the Property.

2.29 "Property": All of the property previously made subject to the 2006 Declaration, which includes all of the lands known as Figure Eight Island or Figure "8" Beach. This Declaration shall not encumber property owned by Figure Eight Island Yacht Club, Inc. or other non-Owner third parties.

2.30 "Register of Deeds": The office of the Register of Deeds of New Hanover County, North Carolina.

2.31 "Rules and Regulations": The rules and regulations governing the use, occupancy, operation, access to, and physical appearance of the Property, including both Lots and Common Elements, adopted from time to time by the Board.

2.32 "Supplemental Declaration": An amendment or supplement to this Declaration filed pursuant to Article 9 which subjects additional property to this Declaration and identifies the Common Elements within the additional property, if any, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

2.33 "Upkeep": Care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

2.34 "Use Restrictions": The rules and use restrictions more fully defined as set forth in Article 12.

2.35 "Utility Company": A public or private company, such as the private company, Figure "8" Island Utility Company; an entity duly licensed and authorized by the North Carolina Utilities Commission to provide utility services within a specified franchise area; or any entity providing utility services on behalf of a body politic, municipality or other governmental body or entity.

Article 3. Property Rights.

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

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying any portion of the Property to the Association;
- (c) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Elements, including, but not limited to, rules restricting use of the Common Elements to Owners, their families, lessees and guests; rules limiting the number of occupants and guests who may use the Common Elements; rules restricting how many Owners or Members affiliated with a Lot may utilize the call-in service provided by the Association for guests to be called onto the Island without being accompanied by the Owner or Member; and rules restricting the number of guests who may be called onto the Island without being accompanied by the Owner or Member;
- (d) The right of the Board to adopt rules, regulations or policies establishing design guidelines for Dwelling Units and other improvements;
- (e) The right of the Board to adopt rules, regulations or policies regulating activity and conduct on Lots;
- (f) The right of the Association to grant easements or to dedicate or transfer all or any part of the Common Elements to governmental entities pursuant to Section 5.3;

(g) The right of the Board to impose reasonable requirements and charge reasonable admission, or other fees for the use of any recreational facility or other improvements situated upon the Common Elements;

(h) The right of the Board to permit use of the Common Elements by Figure "8" Island Utility Company;

(i) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred by the Association;

(j) The right of the Association to convey or encumber portions of the Common Elements with the approval of the Owners of sixty-seven percent (67%) of the Lots or as otherwise set forth in Section 5.9 of this Declaration;

(k) The right of the Board to suspend the privilege of an Owner or Member to use recreational facilities within the Common Elements, the right of the Board to suspend a Member's privileges associated with vehicle decal usage (such as allowing additional parking rights or allowing expedited gate access), and the right of the Board to suspend any Member privileges in Section 4.4 or other provisions of this Declaration;

(l) The right of the Board to suspend any and all privileges of Special Members, individually or as an entire class;

(m) The right of the Association to rent or lease portions of the Common Elements to Figure "8" Island Utility Company or Figure Eight Island Yacht Club, Inc.; and

(n) The right of the Association to change, alter, or re-designate portions of the Common Elements or any other real property owned by the Association.

Article 4. Association Function, Membership and Voting Rights.

4.1 Function of Association. The Association shall be the entity responsible for management, Upkeep, operation and control of the Common Elements. The Association shall be the primary entity responsible for enforcement of the Association Documents. The Association shall perform its functions in accordance with the Association Documents and applicable North Carolina law. The Association shall have all powers reasonably necessary to perform its functions and obligations described in the Association Documents, including, but not limited to, all powers set forth in Chapter 55A of the North Carolina General Statutes.

4.2 Membership in Association. A Person eligible to be a Member must apply to the Board for membership in the Association. Eligibility is determined by this Section 4.2 and the terms of the Bylaws. The Board determines

who is admitted to membership and who is a Member, and not all Owners may be Members of the Association. A Member of the Association must be an Owner, but only natural Persons shall be Members of the Association. In the case of a non-natural Person Owner, certain eligible Persons affiliated with the non-natural Person Owner, as defined in the Bylaws and the Rules and Regulations, may be Members if the application for membership is approved by the Board. To the extent there is any conflict on the provisions dealing with membership in this Article 4 and in the Bylaws, the terms of the Bylaws shall control to eliminate any such conflict.

4.3 Membership Application. Any Person eligible to be a Member pursuant to this Article, the Bylaws, and the Rules and Regulations who desires to apply for membership may do so by taking the steps outlined in the Bylaws and Rules and Regulations.

4.4 Member Privileges. The following benefits and privileges will only be given to the Members and not to every Owner of a Lot:

(a) Only Members receive decals for their automobiles, which must be used by the Members for their personal use or the use of their Immediate Family Members. A Member Not in Good Standing, as that phrase is defined in the Bylaws, shall not receive a decal until that designation is removed.

(b) Only Members or such designees allowed in the Rules and Regulations may sponsor tenants, guests, and invitees. This includes call-in privileges for passes for tenants, guests, and service providers. A Member Not in Good Standing, as that phrase is defined in the Bylaws, loses the ability to sponsor tenants, guests, and invitees and loses call-in privileges until such time as the Member Not in Good Standing designation is removed, but the right of ingress and egress to the Lot through which the Member Not in Good Standing acquired membership remains at all times for the Member Not in Good Standing and his or her tenants, guests, and invitees.

(c) Only Members with valid membership identification decals may park outside of a Lot. A Member Not in Good Standing, as that phrase is defined in the Bylaws, cannot park outside of a Lot.

4.5 Special Member Privileges. Special Members will not have the benefits and privileges of Members, and Special Members will not have any obligation to pay any Assessment. Special Members only will have those benefits and privileges with regard to usage of the Common Elements as set forth in the Rules and Regulations for the Association.

4.6 Voting. There shall be one (1) vote per Lot. All Owners delegate their right to cast this one (1) vote to the Members pursuant to the parameters and procedure set forth in the Bylaws, except with regard to amendments to this Declaration that will require Owner signatures pursuant to Section 15.2 of this

Declaration. Members will vote on all issues pertaining to the Association given to Owners and Members, except for amendments to this Declaration that require Owner signatures as provided in Section 15.2 of this Declaration and as otherwise set forth in this Declaration. Special Members have no right to vote on any issue. In the event of any conflict between the Bylaws and this Declaration as to voting by Members, the terms of the Bylaws will control to eliminate any such conflict.

Article 5. Association Rights, Obligations and Services.

5.1 **Personal Property and Real Property.** The Association may acquire, hold, and dispose of tangible and intangible personal property and real property.

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

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

5.4 **Disclaimer of Liability.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote the health, safety and welfare of Owners and occupants of any Lot.

(a) Notwithstanding anything contained herein or in the Association Documents, neither the Association, the Board, nor the Island Administrator or any employee of the Association shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Property.

(b) Neither the Association, the Board, nor the Island Administrator or any employee of the Association shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Property. Each Owner and occupant of a Lot and each family member, tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that the Association, the Board, the Island Administrator, and the employees of the Association have made no representations

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

(c) Neither the Association, the Board, nor the Island Administrator or any employee of the Association shall be liable or responsible for any personal injury, illness or any other loss or damage arising out of any beach or water-related feature or hazard adjacent to, near, over, or on the Property. Each Owner and occupant of a Lot and each family member, tenant, guest, and invitee of any Owner or occupant acknowledges that the Association, the Board, the Island Administrator, and the employees of the Association have made no representations or warranties, nor has any Owner or occupant, or any family member, tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of the beach or water-related features or hazards adjacent to, near, over, or on the Property.

(d) No provision of the Association Documents shall be interpreted as creating a duty of the Association, the Board, or the Island Administrator or other managing agent of the Association to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot), each Member (by virtue of his or her acceptance into membership), and each other Person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, or the Island Administrator of the Association, if any, their directors, officers, committee and Board members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

5.5 Safety. The Association may maintain or support certain activities within the Property designed to provide a greater level of safety than exists within the Property.

(a) Neither the Association, the Board, nor the Island Administrator of the Association shall in any way be considered insurers or guarantors of safety within the Property. Neither the Association, the Board, nor the Island Administrator of the Association shall be held liable for any loss or damage for failure to provide adequate safety or ineffectiveness of safety measures undertaken.

(b) All Members, Owners, and occupants of any Lot, and all family members, tenants, guests, and invitees of any Owner, acknowledge that the Association, its Board of Directors, its committees, its employees, and the Island Administrator of the Association do not represent or warrant that any entry gate, patrolling of the Property, neighborhood watch group or volunteer or employed safety patrol, any island-wide safety system, or any Lot-specific safety system that may be designated by or installed according to guidelines established by the Architectural Review Committee may not be compromised or circumvented; nor that any entry gate, patrolling of the Property, neighborhood watch group or volunteer or employed safety patrol, or any security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that any entry gate, patrolling of the Property, neighborhood watch group or volunteer or employed safety patrol, or any security systems will in all cases provide the detection or protection for which the system is designed or intended.

(c) All Members, Owners, and occupants of any Lot, and all family members, tenants, guests, and invitees of any Owner, acknowledge and understand that the Association, its Board and committees, and the Island Administrator and other employees of the Association are not insurers of safety within the Property. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Lot that the Association and its Board and committees, are not guarantors of security or safety and that each person using property within the Project assumes all risks of personal injury and loss or damage to property including Lots, improvements thereon and the contents thereof, resulting from acts of third parties.

(d) All Owners and occupants of any Lot and all family members, tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board and committees, and the Island Administrator of the Association have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representations or warranties, expressed or implied, relative to any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security systems recommended or installed or any safety measures undertaken within the Property.

5.6 Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Association shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, trash collection, pest control service, cable television service, internet or wireless

connectivity services, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. This paragraph shall be specifically construed to allow the Association to enter into a contract for the overall management of the Association with any individual or corporation. The Association or its managing agent shall also be permitted to provide services to any Owners where it deems it to be in the interest of the Association to do so.

5.7 Change of Use of Common Elements. Upon adoption of a resolution by the Board stating that, in the Board's opinion, a service provided by the Association pursuant to Section 5.6 or the then present use of a designated part of the Common Elements is no longer in the best interest of the Owners or is no longer necessary or appropriate for the purposes intended, the Board shall have the power and right to terminate such service or change the use of any Common Elements (and, in connection therewith, construct, reconstruct, alter, or change the buildings, structures, and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided that any such new use (i) shall be for the benefit of the Owners or Members, (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Elements, and (iii) shall be approved unanimously by all directors on the Board at the time of the change of use.

5.8 View Impairment. The Association does not guarantee or represent that any view over and across any property, including any Lot, from adjacent Lots will be preserved without impairment. All Owners understand and acknowledge that architectural review determinations by the Architectural Review Committee or the Board may result in view impairment for another Owner, and Owners expressly waive and release the Association from any liability whatsoever from any such determination on the basis of view impairment. The Association shall have no obligation to prune or thin Landscaping except as set forth in Article 6. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

5.9 Shifting of Beach Access. Upon action duly taken by the Board, and without any membership vote, the Association may convey all or any portion of a Beach Access to any Owner who owns an adjoining Lot to the Beach Access being conveyed, only so long as the Association contemporaneously receives a portion of the Owner's Lot that is of equal or greater acreage to the Beach Access conveyed away by the Association and that is capable of being used by Owners to access the beach. This action by the Association is not subject to the provisions of Section 5.7, except as provided in the next sentence. Any such tract received by the Association from the preceding process of shifting the beach access shall be transferred to the Association by General Warranty Deed, free and clear of all encumbrances of record

except for this Declaration, and such tract shall become a Beach Access immediately upon acquisition by the Association, unless the Board takes action pursuant to Section 5.7 herein.

Article 6. Maintenance.

6.1 Association's Responsibility. The Association shall provide Upkeep for the Common Elements, which shall include, but need not be limited to:

- (a) all Common Elements and all improvements upon the Common Elements;
- (b) all Landscaping, signage, and improvements, including any courts, structures, beach paths, bike or pedestrian pathways, and trails, situated upon the Common Elements;
- (c) all private streets, including any asphalt repairs thereto, situated upon the Common Elements and the bridge and all associated bridge systems related thereto; and
- (d) any additional property included within the Common Elements as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, any plat of any portion of the Property, or any contract or agreement for maintenance thereof entered into by the Association.

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

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

6.2 Owner's Responsibility. Each Owner shall provide for the Upkeep of his or her Lot and Dwelling Unit, and all other structures, parking areas, Landscaping, and other improvements upon the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such responsibility for Upkeep is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her Upkeep responsibility, the Association may perform such work

for Upkeep and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 10.3. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

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

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

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

Article 7. Insurance and Casualty Losses.

7.1 Association Insurance. The Association, acting through its Board, the Island Administrator, or the Association's duly authorized agent, shall obtain and continue in effect if reasonably available the following types of insurance:

(a) Property insurance covering risks of physical loss on an "all-risk" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Elements to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty; provided, however, that the Association may choose to not obtain insurance for any bridge or bridge system. If such coverage on an "all-risk" basis (or comparable coverage by whatever name denominated) is not generally available at a reasonable cost, then "broad form named perils" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property. This provision for property insurance shall not be construed to require the Association to obtain coverage for any structure owned by any party other than the Association. The Association may elect to provide insurance for said structures (i) with the approval of a majority vote of the votes allocated to the Lots for membership vote or (ii) by approval of the Board, in its sole discretion, if it is shown to the Board that such individual coverage is not available;

(b) Commercial general liability insurance on the Common Elements, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf and including coverage for non-owned automobile liability. If generally available at reasonable cost, the commercial general liability insurance shall have a limit of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage;

(c) Workers compensation insurance and employers' liability insurance if and to the extent required by law;

(d) Directors and officers' liability insurance or equivalent association liability insurance;

(e) Commercial crime insurance, including employee fidelity insurance, in an amount determined by its best business judgment which shall not be less than one-sixth (1/6) of the annual Assessments on all Lots plus reserves on hand for employee fidelity insurance. Such commercial crime insurance shall cover funds held by the Association's Island Administrator or other managing agent, as applicable, unless such managing agent's insurance insures the Association against crimes committed by or against such managing agent. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation;

(f) Such additional insurance, including, but not limited to, flood, wind/hail, earthquake and hurricane insurance, as the Association in its best business judgment, acting through its Board or the Island Administrator, determines advisable; and

(g) The Association shall have no insurance responsibility for any portion of any Lot except as stated in Section 7.1(a).

7.2 Association Policy Requirements. Premiums for all insurance on the Common Elements shall be Common Expenses and shall be included in an Assessment. In the event that insurance costs increase during the fiscal year, the Board may levy a Special Assessment for the increased costs pursuant to Section 10.4 herein, and such Special Assessment shall become effective upon approval by the Board.

The policies may contain a reasonable deductible as determined by the Association, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and

an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners, their family members, guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Benefited Assessment in accordance with Section 10.3.

(a) All insurance coverage obtained by the Association shall

(i) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

(ii) Contain a waiver of subrogation as to any claims against the Association's Board, officers, committees, employees, and its manager and the Owners;

(iii) Contain an endorsement preventing the Association's insurance carrier from invoking its "other insurance" clause to obtain any contribution from any insurance maintained by individual Owners; and

(iv) Provide that if, at the time of a loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides the primary insurance coverage.

(b) In addition, the Association shall secure, if reasonably available and as applicable, insurance policies providing the following:

(i) A waiver of the insurer's rights to repair and reconstruct instead of paying cash; and

(ii) An endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

7.3 Owner's Commitment to Repair and Reconstruction.

Each Owner covenants and agrees that in the event of damage to or destruction of the Dwelling Unit or any other structures on or comprising his or her Lot, he or she shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 11 of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Article 8. No Partition.

Except as permitted in this Declaration, the Common Elements shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

Article 9. Annexation of Property. The Association may subject any property to the provisions of this Declaration with the consent of the owner of such property and the affirmative vote of Members representing sixty-seven percent (67%) of the votes allocated to the Lots for membership vote. Such annexation shall be accomplished by recording a Supplemental Declaration in the Register of Deeds describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon the recording unless otherwise provided therein. Any property annexed into the Association by the provisions of this Declaration shall be subject to all conditions and privileges of the Association, and Owners of any such annexed property may apply to be members of the Association consistent with the requirements in Article 4 and the Bylaws.

Article 10. Assessments.

10.1 Creation of Assessments.

(a) The Association shall levy assessments against each Lot for Common Expenses as the Board may specifically authorize from time to time. There shall be four (4) types of assessments for Association expenses: (a) Assessments to fund Common Expenses for the general benefit of all Lots; (b) Benefited Assessments as described in Section 10.3; (c) Special Assessments as described in Section 10.4; and (d) Emergency Assessments as described in Section 10.5. Except as otherwise provided to the contrary in this Article 10, any funds received from any category or type of assessment identified in the preceding sentence may be used to pay any Common Expense, to fund any capital improvement to improve, repair, or maintain any Common Element, to fund any real property acquisition by the Association or Figure 8 Beach Utility Company, to acquire any easement for the benefit of the Project, or for any purpose set forth in Section 10.2. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Lot within any portion of the Property, is deemed to covenant and agree to pay these assessments.

(b) All assessments, together with interest from the due date of such assessment at a rate determined by the Association (not to exceed the highest rate allowed by North Carolina law), late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is levied until paid, as more particularly provided in Section 10.7. Each such assessment, together with

interest, late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, also shall be the personal obligation of the Owner of such Lot at the time the assessment was levied. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance. No first Mortgagee which obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

(c) All assessments shall be paid in such manner and by such dates as the Board may establish. Unless the Board otherwise provides, an annual Assessment for each Lot shall be due and payable in advance each year on the first day of the fiscal year of the Association.

(d) The Association shall, upon request by an Owner, furnish to any Owner a certificate in writing signed by an officer of the Association or the Island Administrator or his designee setting forth whether assessments for such Owner's Lot have been paid and any delinquent amount. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(e) No Owner may exempt himself or herself from liability for assessments by non-use of Common Elements, abandonment of his or her Lot or Dwelling Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it or for inconvenience or discomfort arising from repairs or improvements or other action taken by it.

(f) Assessment funds may be expended or utilized for any purpose contemplated in Section 10.1(a), Section 10.2, or elsewhere in this Declaration. The judgment of the Association in imposing, or the making of, an assessment or related charges, and the expenditure of any funds obtained by the Association through assessments or any other source, shall be final.

10.2 Computation of Annual Assessment. The Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year that may include, without limitation, the anticipated costs of adding to, maintaining, operating, improving, enlarging, increasing, and replacing the Common Elements; maintaining, operating, improving, replacing, or acquiring assets to prepare to replace the bridge or bridge system components; acquiring real property, easements, or other interests in real property for purposes of access to the Island, the beach, or any other portion of the Property, as well as for any other business purpose of the Association; protection of the Property from erosion; channel dredging; beach nourishment; maintaining, operating, improving, and replacing the boat ramp facility; funding the Figure "8" Island Utility Company or

otherwise providing funds for maintenance, operation, improvement, or replacement of any Figure "8" Island Utility Company equipment, lines, wells, or other instruments of operation; collecting and disposing of garbage, ashes, rubbish, and the like; employing an Island Administrator or other managing agent and other employees of the Association; maintenance, improvement, and lighting of the streets, roads, drives, rights of way, Common Elements and facilities, tennis courts, marsh and waterways; employing watchmen; enforcing the terms of this Declaration; paying taxes, indebtedness of the Association, insurance premiums, governmental charges of all kinds; allocating funds to one or more reserve accounts to set aside funds to meet projected needs in the future in an amount determined by the Board in its sole discretion; and any other thing necessary or desirable in the sole opinion of the Board to keep the Property in neat and good order and to provide for the health, welfare, and safety of Owners. In determining the budget, the Board, in its discretion, may consider other sources of funds available to the Association.

The annual Assessment for the fiscal year shall be determined based upon the budget adopted by the Board. The amount of each annual Assessment shall be levied equally against all Lots, subject to the Board's right to alter that equal allocation and to establish different rates for different classifications of Lots according to the use or location of said Lots.

10.3 Benefited Assessments. The Board may levy Benefited Assessments against particular Lots for expenses incurred or to be incurred by the Association, as follows:

- (a) to cover the costs, including overhead and administrative costs, of Upkeep and replacement of any Limited Common Elements;
- (b) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, Landscape maintenance, caretaker service, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner.
- (c) to cover costs incurred in bringing the Lot into compliance with the terms of the Association Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their family members, tenants, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying a Benefited Assessment under this subSection (c); and
- (d) to cover the cost of any deductible as described in Section 7.2.

10.4 Special Assessments. In addition to Assessments for the fiscal year, the Board, without Member approval, may levy, in any year, Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted; provided, however, that any Special Assessment in excess of Three Hundred Thousand and No/100 Dollars (\$300,000.00) in aggregate for all Owners must be approved by either (i) a majority of Members present in person or by proxy at a duly called meeting, with the requirement that sixty percent (60%) of the votes allocated to the Lots for membership vote must be cast by Members represented in person or by proxy at the meeting; or (ii) a majority of Members who cast a ballot in an action by written ballot pursuant to the terms of the Bylaws, with the requirement that sixty percent (60%) of the votes allocated to the Lots for membership vote must be cast by ballot. Notwithstanding the foregoing, the Board, without Member approval, may levy a Special Assessment in any amount to cover increased insurance costs as provided in Section 7.2. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which such Special Assessment is approved. The amount of each Special Assessment shall be levied equally against all Lots, subject to the Board's right to alter that equal allocation and to establish different rates for different classifications of Lots according to the use or location of said Lots, the benefit to be obtained from the project by the Lot Owner, the ad valorem tax valuation of the Lot, and any other factors deemed sufficient by the Board.

10.5 Emergency Assessments. In addition to the Assessments for the fiscal year and other forms of Special Assessments set forth in Section 10.4 above, and notwithstanding the foregoing Section on Special Assessments, the Board may levy as a special assessment an Emergency Assessment in any amount, without a membership vote, in response to a natural disaster or a catastrophic event, or to address any other emergency, as determined by the Board in the Board's sole discretion. Emergency Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which such Emergency Assessment is approved. The amount of each Emergency Assessment shall be levied equally against all Lots, subject to the Board's right to establish different rates for different classifications of Lots according to the use or location of said Lots, the benefit to be obtained from the project by the Lot Owner, the ad valorem tax valuation of the Lot, and any other factors deemed sufficient by the Board.

10.6 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the first day of the month following (a) the date the Lot is made subject to this Declaration, or (b) the date the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The Board may determine that any assessment (Annual Assessment, Benefited Assessment, Special Assessment, or Emergency Assessment)

shall be payable in installments and shall be otherwise paid in the manner directed by the Board.

10.7 Lien for Assessments. All assessments authorized in this Article shall constitute a lien against the Lot against which they are levied, as provided in N.C. Gen. Stat. § 47F-3-116, as amended, until paid unless otherwise specifically precluded in this Declaration. The lien also shall secure payment of interest (subject to the limitations of North Carolina law), late charges, and costs of collection (including attorneys' fees, lien fees, and administrative costs). Such lien shall be superior to all other liens, except (a) those superior by law, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when any assessment or other charge is delinquent, by suit, judgment, and foreclosure.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure or is otherwise acquired by the Association: (a) no right to vote shall be exercised on the Lot's behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, a Mortgagee holding a first Mortgage of record or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 10.6, including such acquirer, its successors and assigns.

10.8 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

10.9 Exempt Property. The following property shall be exempt from payment of Assessments:

(a) all Common Elements and all other real property owned by the Association; and

(b) all property dedicated to and accepted by any governmental authority or Utility Company.

Article 11. Architectural and Design Standards.

11.1 General. No improvements (including staking, clearing, excavation, grading and other site work), exterior alteration of existing improvements (including painting), placement or posting of any object or thing on the exterior of any Lot, Dwelling Unit, other structure or the Common Elements (e.g., signs, antennae, clotheslines, fencing, playground equipment, temporarily or permanently installed basketball goals, pools, propane or other fuel tanks, lighting, temporary structures, bulkheads, driveways, paths, and artificial vegetation), planting or removal of Landscaping, installation or removal of any pier, bulkhead or retaining wall, or installation or removal of an irrigation system shall take place except in compliance with this Article, this Declaration, including the Use Restrictions, and the Design Guidelines and with the approval of the appropriate committee under Section 11.2.

Any Owner may remodel, paint or redecorate the interior of structures, including the Dwelling Unit on his or her Lot, without approval under this Article, as long as the Owner adheres to all restrictions and rules relating to work schedule and to contractor access to the Lot. However, modification of the exterior in any manner, and modifications to the interior of screened porches, patios, and similar portions of a Lot visible from other Lots, Dwelling Units, the beach, Common Elements or streets within the Property, shall be subject to this Article and approval as set forth below. Notwithstanding the foregoing, any remodeling, painting, or redecorating of the interior of structures that requires (i) any parking of a vehicle outside of a Lot's driveway or in excess of the number of vehicles allowed on a Lot or (ii) any placement of any dumpster, debris, portable toilet, or other item of a temporary nature on the Lot outside of the Dwelling Unit, must be approved by the Architectural Review Committee and, if necessary as determined by the Architectural Review Committee, by the Island Administrator.

This Article shall not apply to improvements to the Common Elements by or on behalf of the Association.

11.2 Architectural and Design Review.

(a) Architectural Review Committee. The Board shall create and appoint an Architectural Review Committee ("ARC") to administer and enforce architectural standards under this Article and to review and act upon all applications for construction or other improvements within the Property. This includes all original construction and all subsequent improvements to any Lot as described in Section 11.1 herein. The ARC shall consist of at least three (3) Persons who shall serve and may be removed in the Board's discretion. In lieu of creating

and appointing an ARC, the Board may perform all functions of the ARC set forth in this Declaration and in the Bylaws.

(b) Fees. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense. In addition, the ARC may establish and charge a reasonable impact fee for approved construction or other approved modifications to a Lot or Dwelling Unit to defray the costs and expenses of increased road maintenance, impact to the bridge, and other adverse consequences to the island associated with any construction or related activity. Notwithstanding the foregoing, and in addition thereto, the Association is explicitly authorized to require a construction bond as set forth in the Design Guidelines and subject to the terms, conditions and procedures in the Design Guidelines.

(c) Bond. The Board or the ARC may require posting of security by any Owner, or such Owner's contractor or builder, to be utilized for the payment of any fines and cost of any enforcement in accordance with Section 11.9 herein, or the repair of any damage to any Common Elements or providing Upkeep of such Common Elements in excess of normal Upkeep as may occur during the construction of any permitted improvements within the Property. The amount and type of bond or security, as required by the Board or the ARC, may be changed from time to time and does not necessarily have to be consistent as to all Owners, contractors or builders.

11.3 Size and Structure Restrictions. The minimum enclosed dwelling area for any Dwelling Unit shall be two thousand (2,000) square feet. "Enclosed dwelling area" shall mean the total enclosed area within a Dwelling Unit, excluding garages, boat sheds, terraces, decks, open porches, attached shed porches, and similar structures.

No structure may be constructed on a Lot other than (i) a detached single-family Dwelling Unit and (ii) one or more small accessory buildings (such as a detached garage, cabana, servant's quarters, or guest facilities); provided the use of such accessory building does not in the opinion of the ARC overcrowd the site, and provided further that such buildings are not used for Business and Trade.

11.4 Guidelines and Procedures. In addition to the restrictions set forth in Section 11.3, the Board shall prepare Design Guidelines which shall apply to all construction activities and all other activities to modify or improve a Lot or Dwelling Lot within the Property, except as provided in Section 11.1. The Board shall have the authority to amend the Design Guidelines.

The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, intended use, and any other applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ARC, and compliance with the Design Guidelines does not guarantee approval of any application. Even if an application complies with the Design Guidelines, the ARC has the authority, in its sole discretion, to deny any application for any improvement to a Lot for any reason, including purely aesthetic considerations.

Any amendments to the Design Guidelines shall apply to construction, improvements, and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. However, to the extent any structure previously approved requires Upkeep that necessitates an application hereunder, the applicant shall adhere to the current Design Guidelines at the time of application in order to gain approval. There shall be no limitation on the scope of amendments to the Design Guidelines; the Board is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

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

All structures and improvements constructed or installed upon a Lot shall be constructed or installed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are approved by the ARC, unless the Board has granted a variance in writing pursuant to Section 11.7. So long as the ARC and/or Board has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

11.5 Submission of Plans and Specifications.

(a) No activities within the scope of Section 11.1 shall commence on any Lot until an application for approval of the proposed work has been submitted to and approved in writing by the ARC. Such application shall be in the form required by the ARC and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefore and other features of proposed improvements, as applicable.

The Design Guidelines shall set forth the procedure and any additional information for submission of the Plans, which may include, but not be limited to, requiring all plans for structures to have an architect's seal.

(b) In reviewing each submission, the ARC may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to lot size, surrounding structures, and plant life. The ARC may require relocation of native plants within the construction site or the installation of an irrigation system for the Landscaping including the natural plant life on the Lot as a condition of approval of any submission.

The ARC shall, within the period specified in the Design Guidelines, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines and the reasons for such finding. In the event the ARC fails to advise the submitting party by written notice within the period specified in the Design Guidelines of either the approval or disapproval, a denial shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party. Email communication to an email address provided to the Association shall satisfy the written notice requirement hereunder as well and shall be deemed to have been given at the time of transmittal as reflected in the email.

(c) If construction does not commence on a project for which Plans have been approved within twelve (12) months of such approval, this approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the ARC for reconsideration; provided, however, that the ARC may grant a longer time period for expiration of the approval at the time the approval is granted. Once construction is commenced, the Design Guidelines may provide for the payment of an additional construction bond, road impact fee, or other fee if construction is not completed within eighteen (18) months. If construction is not completed on a project for which plans have been approved within twenty-four (24) months or the period set forth in the Design Guidelines or in the approval, if different, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article; provided, however, that the Association may choose, in the exercise of the Board's judgment, to not enforce this twenty-four (24) month completion obligation when construction is continuing, and the Association, by and through the Board, may exercise its judgment to not enforce the twenty-four (24) month completion obligation without the requirement of formal action from the Board to approve an extension.

11.6 No Waiver of Future Approvals. Each Owner acknowledges that the members of the ARC will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.7 Variances. The Board may authorize variances in writing from the Design Guidelines and procedures, but only: (a) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations; and (b) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. In addition, the Board may authorize variances in writing from any property line setback restrictions set forth on recorded plats showing any portion of the Property when unique circumstances dictate a hardship for the Owner and when the granting of the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. Inability to obtain, or the terms of, any governmental approval or the terms of any financing shall not be considered a hardship warranting a variance.

11.8 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Association, the Board, nor the ARC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. In addition to receiving ARC approval, Owners must obtain all applicable governmental approvals, including, but not limited to, permits, in accordance with applicable law, and ARC approval is not a certification, pledge, or acknowledgement that any proposed construction or improvement will be allowed by any governmental entity. Regardless of compliance with the Design Guidelines, the Association shall not be responsible for any structural or other defects in plans or specifications submitted to the Association or for any structural or other defects in any structure erected in accordance with such plans and specifications. Neither the Association, the Board, the ARC nor any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the ARC and its members shall be defended and indemnified by the Association as provided in the Bylaws.

11.9 Enforcement. Any construction, alteration or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the ARC or the Board, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in

such written notice, cure such nonconformance to the satisfaction of the requester or restore the property, Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Bylaws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefited Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article, the Design Guidelines, and the Rules and Regulations may be excluded from the Property, in accordance with applicable law. In such event, neither the Association, its officers, its directors, its Island Administrator or other managing agent, or its employees shall be held liable to any Person for exercising the rights granted by this section.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC.

Article 12. Plan of Development and Use Restrictions.

12.1 Plan of Development: Applicability: Effect. The Property is subject to Design Guidelines as set forth in Article 11 and other restrictions governing land development, architectural and design control, individual conduct and uses of or actions upon the Property. This Declaration, and the rules and resolutions adopted by the Board, establish affirmative and negative covenants, easements, and restrictions on the Property. All provisions of this Declaration and any rules shall apply to all Owners, their contractors, family members, occupants, tenants, guests and invitees of any Lot.

12.2 Authority to Promulgate Rules.

(a) Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may adopt Rules and Regulations not inconsistent with the Use Restrictions set forth in Section 12.4 hereof, and other such Rules and Regulations, including such rules relating to the use of, and parking and traffic on, streets located within the Property. The Board may adopt rules regarding activity and conduct on Lots and on Common Elements. The Board also may adopt rules relating to access privileges and procedures over the Common Elements and access privileges and procedures to Figure Eight Island; provided, however, nothing herein shall authorize the Board to prohibit ingress or egress to or from the Lot by any Owner.

(b) The Board shall send a copy of the rule to each Owner specifying the effective date of such rule within a reasonable period of time, as determined by the Board, prior to the effective date of the rule. The Association shall provide, without cost, a copy of the rules then in effect to any requesting Member or Mortgagee.

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

12.3 Owners' Acknowledgment. All Owners are subject to the Use Restrictions and are given notice that: (a) their ability to use their privately owned property is limited thereby; and (b) the Board and/or the Owners may adopt, delete, modify, create exceptions to, or amend the rules.

Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time.

12.4 Use Restrictions. In addition to other provisions contained herein, the Property is subject to the following restrictions:

(a) All Lots shall be used exclusively for residential purposes, subject to Section 12.5(ix) herein and applicable laws.

(b) Interval ownership, also known as time share ownership, is not permitted. No Owner may lease, deed, sell, convey or otherwise transfer ownership of a Lot under any time sharing or interval ownership arrangement or subject a Lot to a time share instrument as such is defined under North Carolina law.

(c) Owners must provide receptacles for garbage and such containers shall be kept behind a fully-screened area or other structures on Lots. Trash receptacles must be accessible for trash collection by vendors providing trash

collection service at all times. Only normal household trash may be placed in the receptacle. The following items are not normal household trash: landscaping and yard waste; hazardous materials such as paint, solvents, gasoline, kerosene, motor oil, lubricating oil, and agricultural chemicals; construction debris and building materials; Styrofoam packing materials; and other items identified in the Rules and Regulations. To the extent the Association provides trash collection services to Lots, the vendor providing trash collection services may impose other restrictions on items that may not be included in trash receptacles, and in such an event, Owners must abide by these restrictions. Large trash items such as appliances or furniture will not be removed by the trash service on the Property and may not be kept outside the Dwelling Unit on Lots.

(d) Littering on any portion of the Property is prohibited.

(e) Owners must provide at least three (3) parking spaces on their Lot for automobiles in accordance with the Rules and Regulations established by the Board, and the location of parking spaces on the Lot is governed by the architectural review requirements in Article 11.

(f) Owners, contractors, family members, occupants, tenants, guests and invitees must park vehicles only on the Owners' Lot, except the Board may adopt rules authorizing parking by Members in designated parking locations on the Common Elements. Unless specifically allowed in the Rules and Regulations, no contractors may park on Common Elements without written permission from the Island Administrator or his designee.

(g) Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, and such construction or installation, including location, must be approved by the Architectural Review Committee in accordance with Article 11 hereof. No windmills, wind generators, or other apparatus for generating power from the wind shall be erected or installed on any Lot without the prior written consent of the Architectural Review Committee in accordance with Article II hereof. No approval shall be required for modifications within this Section that are specifically mandated by local, state, or federal government(s), except that the location for certain modifications may require approval by the Architectural Review Committee.

(h) Leasing of Dwelling Units. Nothing contained here shall prohibit the leasing or subleasing of a Dwelling Unit; provided, however, that:

i. No Dwelling Unit shall be leased for a period of less than twenty-four (24) hours without the prior written consent of the Board.

ii. All leases for any Dwelling Unit shall be in writing signed by the Owner and the tenant.

iii. All leases shall be in such form, and contain such provisions, as approved by the Association, including provisions (a) requiring the tenant to comply with the Association Documents, (b) providing that the failure of any tenant under a lease to comply with the Association Documents shall constitute an event of default under the lease, and (c) providing that the Board may exercise any and all remedies for a default under the Association Documents against the Owner and the tenant under the lease including, without limitation, the right to remove a tenant from possession of a Dwelling Unit by judicial process or otherwise.

iv. No structure on any Lot other than the Dwelling Unit may be leased or otherwise occupied, and no fraction or portion of any Dwelling Unit may be leased separately from any other portion of the Dwelling Unit.

v. A true executed copy of any lease for a Dwelling Unit shall be provided to the Association prior to the occupancy by the tenant of such Dwelling Unit, along with the names of the tenants and their guests and a description of their vehicles. Tenant passes shall not be issued without a lease being provided, and other restrictions on tenants who are not subject to a lease provided to the Association may be adopted in the Rules and Regulations.

vi. Tenants and their guests may not bring dogs or other animals onto the Property, and Owners shall include this restriction as a material term in all leases.

vii. Tenants and their guests may not bring personal watercraft such as jet skis or wave runners onto the Property, and tenants and their guests may not use personal watercraft provided by the Owner. Owners shall include this restriction as a material term in all leases.

viii. Unless the Association sets forth a different procedure, tenants must have temporary access passes for their vehicles to access the Property. These passes may be obtained by either the rental management company or the Owner.

ix. All leases shall contain a provision advising tenants that they will be required to execute a Visitor Contract to gain access to a term-long access pass. To receive a term-long access pass, all tenants must enter into the Visitor Contract, and the Visitor Contract shall include such terms as the Board determines necessary or advisable, including, but not limited to, a provision providing that tenants shall be denied access if they fail to comply with the parking rules or other Rules and Regulations.

x. Owners grant, authorize, and empower the Association with all power and authority to enforce the terms of the Visitor Contract, the terms of this Declaration, and the terms of Rules and Regulations against all tenants, as allowed by law. In addition, and without loss of any right held by Owners to enforce the terms of any lease, the Owners authorize the Association to exercise all rights of the Owner under any lease, including, but not limited to, the right to terminate any lease under its terms and the right to rescind access rights for tenants onto the Property, in the event of a violation of the Association Documents, the lease, or the Visitor Contract by a tenant, but the Association does not assume or accept any liability or duty under any lease.

xi. The Board may also adopt reasonable Rules and Regulations regarding leasing which may include, but are not limited to, the imposition of a fee to the Owner leasing the Dwelling Unit equal to the costs of administration and ensuring compliance incurred by the Association with the restrictions and Rules and Regulations relating to leasing. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Dwelling Unit by any person other than the Owner, or the Immediate Family Members of the Owner, for which the Owner receives, or the tenant provides, any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

(i) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporary or permanently without the written approval of the Association. Small tents, cabanas, and similar structures may be placed on a Lot for daily use, but must be removed prior to end of each day, unless otherwise allowed by the Association. Specifically, all tents and other temporary structures placed on the beach shall be taken down daily and shall not be left abandoned or left on any beach path, sidewalk, or other portion of the Common Elements. No trailer, mobile home, camper, R.V., or like vehicle shall be allowed on the property at any time; PROVIDED, HOWEVER, that construction trailers may be allowed on a Lot for a limited period of time with written approval of the Association. No structure which is finished or partially finished at a manufacturing unit or plat and transported for quick assembly and which is designed to be disassembled and relocated shall be allowed without written approval of the Association. It is specifically the intention and purpose of this covenant to restrict the location of any manufactured home as defined in N.C. Gen. Stat. § 143-145 and any structure for which a "Label of Compliance," as defined in N.C. Gen. Stat. § 143-145, is issued, including but not limited to those structures which are generally referred to as mobile homes, trailers, relocatable houses, or similar type structures on the property.

(j) Use of any Dwelling Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Dwelling Unit rotates among participants in the program on a fixed or floating time schedule over a period of years is prohibited.

(k) Any activity which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Dwelling Unit or which creates excessive noise, unreasonable risk of fire or explosion, or other conditions which are a nuisance as determined by the Association are prohibited.

(l) Noise levels from any Lot, other than noise from normal and customary construction, maintenance, and landscaping equipment, must not reach a level that unreasonably interferes with normal conversation on the open areas of adjacent Lots. However, the Association, through the Island Administrator or Board, may approve the use of amplified speech, music, or other noise under such conditions as the Association determines will not unreasonably disturb other Lot Owners ("Noise Exception"). The Association may require the Owner requesting the Noise Exception notify other Owners within a certain distance of the proposed noise producing activity prior to granting the Noise Exception. The Board may adopt additional rules, regulations, and policies regarding noise from a Lot or from Common Elements.

(m) A well may not be drilled or maintained on a Lot without the prior written consent of the Association.

(n) No Lot may be subdivided and the boundary lines of Lots may not be changed without the prior written consent of the Association.

(o) No Lot may be increased in size by filling in the adjacent waters without the prior written consent of the Board and the appropriate state and federal agencies.

(p) Docks. No private docks, piers, moorings, boat houses, slips, or similar structures may be erected on, placed on, or connected to any Lot, except with the prior written consent of the Association. All piers and docks constructed in compliance with applicable government standards prior to January 1, 2005 shall be deemed approved by the Association. In order to obtain Board approval the following must be complied with:

i. Complete plans and specifications including site, material, color, and finish must be submitted to the Board in writing;

ii. Written approval by the Board of such plans and specifications must be obtained, the Board being granted the right in its sole discretion to disapprove such plans and specifications on any reasonable grounds;

iii. Any alteration of the plans and specifications or of the completed structure must also be submitted to the Board in writing, and the Board's approval in writing must be similarly secured prior to construction, the Board having the same rights to disapprove alterations as it has for disapproving the original structures;

iv. The Board shall not be responsible for any structural or other defects in plans or specifications that it approves;

v. The length of the structure must be approved in writing by the Board or ARC. In no case shall a structure exceed two-hundred (200) feet in length from the normal high water line on any Lot or the bulkhead on any Lot, whichever is further landward.

All Lot Owners who construct or cause to be constructed private docks, piers, moorings, boat houses, slips, or similar structures pursuant to this Section must maintain those structures in good repair and keep them clean and orderly in appearance at all times, and paint or otherwise treat all wood or metal located above the high water mark, exclusive of pilings, and maintain such wood or metal in an attractive manner. If the Board determines that a structure has failed to meet these standards it shall notify the Lot Owner in writing to remedy the inadequate condition. The Lot Owner will then have thirty (30) days to bring the structure into compliance with this section. In addition to any other enforcement rights, if an Owner fails properly to perform his or her Upkeep responsibility, the Association may perform such work for Upkeep and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 10.3.

These restrictions on private docks, piers, moorings, boat houses, slips, and similar structures apply to these structures on any Lot on the Property. These restrictions in this subSection (p) do not apply to such structures, or activities surrounding such structures, on any real property owned by Figure Eight Island Yacht Club, Inc. or its successors or assigns.

(q) Open fires outside of a Dwelling Unit are prohibited unless contained within a fireplace integrated into the Dwelling Unit. Gas and charcoal grills are permitted for the sole purpose of cooking food.

(r) Hunting on a Lot is prohibited.

(s) Discharge of any firearms on a Lot is prohibited.

(t) Fireworks are prohibited on the Property, except that the Island Administrator may allow professional fireworks displays by someone with the appropriate licenses and permits. This restriction on fireworks does not apply to Figure Eight Island Yacht Club, Inc. or its successors or assigns.

(u) The Association may adopt reasonable rules regarding household pets designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and facilities of the Lot and fair share use of the Common Elements. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an

actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No Owner shall be permitted to raise, breed or keep mammals, birds, fish, or reptiles of any kind for commercial purposes. Only Owners shall be permitted to keep household pets on the Property. Tenants, invitees of tenants, and invitees of Owners (such as contractors) shall not be allowed to bring any animals onto the Property.

(v) Signs on Lots are prohibited with the exception of signs required by a governmental agency, property identification signs that comply with the Design Guidelines, and signs approved by the ARC.

(w) Distribution of advertisements and door-to-door solicitation is prohibited.

(x) Beach vitex (*vitexrotundifolia*) is prohibited and may not be planted or maintained on any portion of the Property.

(y) Irrigation.

i. Moisture sensors must be included on all automated irrigation systems.

ii. Irrigation is prohibited between the hours of 6:00 a.m. and 9:00 a.m. and 6:00 p.m. and 9:00 p.m. every day, unless another schedule or restriction is set by the Board from time-to-time.

iii. Owners may irrigate their Lots only three times a week in accordance with the following schedule:

i. Lots with even number addresses may irrigate on only Monday, Wednesday, and Friday.

ii. Lots with odd number addresses may irrigate on only Tuesday, Thursday, and Saturday.

iii. Irrigation is prohibited on Sunday

iv. The Association may impose additional water conservation measures in an emergency or for the protection of any Utility Company system or infrastructure, and Owners must abide by these water conservation measures. This may include, but not be limited to, a prohibition against all irrigation for a period of time determined by the Association.

12.5 Restricted Activities. The following activities are prohibited within the Property unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

- (a) Any activity which tends to cause an unclean, unhealthy or unsafe condition to exist outside of enclosed structures on the Lot;
- (b) Any activity which violates local, state or federal laws or regulations;
- (c) Outside burning of trash, leaves, debris or other materials;
- (d) Outdoor storage of goods, materials, or equipment, except that outdoor storage of building materials shall be permitted during construction on the Lot on which such materials are being stored if authorized by the Design Guidelines or in the ARC's written approval of construction;
- (e) Any activity which would constitute a public or private nuisance;
- (f) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Dwelling Units, except alarm devices used exclusively for security purposes or sewer systems;
- (g) Use and discharge of firecrackers and other fireworks;
- (h) On-site storage of gasoline, heating, or other fuels on Lots, except that a reasonable amount of propane gas and other fuel may be stored on each Dwelling Unit in a location acceptable to the ARC for emergency purposes and for operation of gas cooking grills, lawn mowers, boats and other watercraft, and tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, boats and other watercraft, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article 11;
- (i) Use of any Dwelling Unit for a Business and Trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of residents of the Property; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Property which is noticeably greater than that which is typical of Dwelling Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the

sole discretion of the Board. Leasing of a Dwelling Unit shall not be considered Business and Trade;

(j) Any activities which materially disturb or destroy the vegetation, dunes, beach, wildlife, wetlands, or air quality within the Property or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(k) Vehicles, including without limitation, automobiles, trucks, boats, trailers, motorcycles, low-speed vehicles, dune buggies, campers, vans, golf carts, motorized bicycles, motorized scooters, ATVs, and recreational vehicles, shall only be permitted on the Property in accordance with Rules and Regulations adopted by the Board, and the Board may prohibit the use of certain vehicles on the Property through the Rules and Regulations;

(l) Any construction, erection, placement, or modification of anything, permanently or temporarily, upon a Lot or on the outside portions of the Dwelling Unit, whether such portion is improved or unimproved, except as specifically authorized by the ARC in writing, and otherwise in strict compliance with the provisions of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; swimming pools; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, storage sheds, or fences of any kind;

(m) Any construction, erection, or placement of a marina upon a Lot;

(n) Removal, alteration, damage or change to any of the lands where stormwater management facilities or drainage easements exist; and

(o) Placing or permitting to remain garbage or trash on any Lot, except in covered containers of a type, size and style which are approved in accordance with Article 11 and as otherwise required by the Association or any vendor retained by the Association for trash collection.

12.6 Prohibited Uses. In addition to uses which are inconsistent with applicable zoning or are prohibited or restricted by other recorded covenants, conditions, restrictions or easements, the following uses are prohibited within the Property:

(a) trailer courts, mobile home parks, and recreation vehicle campgrounds;

(b) oil, gas or mineral exploration; drilling, boring, excavation, development, refining, quarrying, or mining operations, and all construction and equipment incident thereto; and oil or gas wells or related equipment or facilities;

(c) commercial excavation of building or construction materials, except in the usual course of construction of improvements;

(d) rental of any portion of a Dwelling Unit to a Person when the entire Dwelling Unit is not being rented to that same Person (i.e., no room-specific rentals or any partial rental of a Dwelling Unit); and

(e) dumping, storage, disposal, incineration, treatment, processing or reduction of garbage, or refuse of any nature, except as is incidental to the use, operation and ownership of any property (or a portion thereof) in accordance with this Declaration and in a manner which is not unsightly and does not result in noxious odors emitting from the subject property.

12.7 Prohibited Conditions. The following shall be prohibited on the Property:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property;

(b) Structures, equipment or other items on the exterior portions of a Dwelling Unit which have become rusty, dilapidated or otherwise fallen into disrepair;

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from ground or surface waters within the Property, except that the Association shall have the right, in the Board's discretion, to approve a private water well on certain Lots as a variance pursuant to Article 11 if the ARC determines the Lot to be of sufficient size to accommodate a well without adversely impacting neighboring property; provided, however, that such a variance may not be granted until such time, if any, that a water source from outside of Figure Eight Island provides water to the Lot seeking the variance;

(d) Jet skis and other personal watercraft, except when brought on the Property by Members with appropriate decals on their towing vehicles; provided, however, that this restriction only applies to the towing of jet skis and other personal watercraft onto the Property, not to jet skis and other personal watercraft accessing portions of the Property by water. Members also may authorize vendors or service providers to deliver jet skis or other personal watercraft to a Lot, provided that such jet skis or other personal watercraft are to be used by the Members and their guests. Boats as commonly defined are not "other personal watercraft" under this Section;

(e) Satellite dishes, antennae and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except for those devices approved by the Association, in writing, for use on a specific Lot prior

to installation. Notwithstanding the foregoing, (i) antennae or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) antennae or satellite dishes designed to receive video programming services via multi point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennae or satellite dishes designed to receive television broadcast signals which are less than one meter in diameter ("Permitted Devices") shall be permitted, provided that permission is obtained from the ARC or Board prior to any Permitted Device being installed; and

(f) Political signs of any kind. 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. **THIS DOCUMENT PROHIBITS THE DISPLAY OF POLITICAL SIGNS.**

12.8 Rights of Owners. Except as may be specifically set forth in the Use Restrictions, neither the Board nor the Owners may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly-situated Owners and occupants shall be treated similarly.

(b) Flags/Speech. The rights of Owners and occupants to display on their Lots flags, signs and symbols of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods in individually owned property (excluding political signs prohibited by Section 12.7) shall not be abridged; provided, however, the Board may adopt reasonable time, place, size and manner of display restrictions regulating flags, signs and symbols which are visible from outside the Lots. The Association shall not regulate or control the content or appearance of any flag, except the Association may require a flag in disrepair to be removed or replaced and the failure of an Owner to remove or replace a flag in disrepair shall be a violation of this Declaration. Notwithstanding any provision of this Declaration, including without limitation the provisions of this Article 12, no rule or regulation adopted by the Board of Directors or the Association shall regulate or prohibit the display of the flag of the United States of America and/or the flag of the State of North Carolina, of a size no greater than four (4) feet by six (6) feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended.

(c) Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions regulating displays which are visible from outside the Lot.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Dwelling Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Dwelling Unit on the basis of the size and facilities of the Dwelling Unit and its fair share use of the Common Elements.

(e) Activities Within Dwelling Units. No rule shall interfere with the activities carried on within the confines of Dwelling Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Dwelling Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Dwelling Unit, or that create an unreasonable source of annoyance.

(f) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Property shall apply prospectively only and shall not require the removal of any property which was being kept on the Property prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law.

The limitations in this Section 12.8 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 14.2(b)2.

Article 13. Easements.

13.1 Confirmation of Easement Rights. Notwithstanding the replacement of the 2006 Declaration with this Declaration, all easements created and described in the 2006 Declaration and in the Restrictions shall be easements appurtenant to, and shall run with, the land by whomsoever owned, whether or not the same shall be contained or referred to in any future deed or conveyance, and shall at all times inure to the benefit and be binding upon the Association and the Owners, all their grantees and their respective heirs, successors, personal representatives or assigns. By signing this Declaration, each and every Owner grants and conveys all easement rights set forth herein to the Association, and confirms and acknowledges the previous granting of all easement rights in the 2006 Declaration and in the Restrictions to the Association, with such easement rights being appurtenant to, and running with, the land by whomsoever owned and shall at all times inure to the benefit and be binding upon the Association and the Owners, all their grantees and their respective heirs, successors, personal representatives or assigns.

13.2 Easements for Utilities, Etc. The Association reserves for itself perpetual easements for the purpose of access and Upkeep upon, across, over, and under all of the Property (including without limitation ten (10) feet along the rear and side Lot lines of each Lot and as depicted on recorded plats of the Property) to the extent reasonably necessary to install and provide Upkeep for cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, beach paths, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. Additionally, the Association reserves for itself perpetual easements for the purpose of access and Upkeep upon, across, over, and under all of the Property for the purpose of dredging or otherwise engaging in excavation with the purpose of gathering bottom sediments and disposing of them at a different location and for the purpose of working to keep waterways and canals navigable as determined by the Association. All of the easements described herein include the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation, to dredge or to access dredging areas, and to maintain reasonable standards of health, safety, and appearance. The Association further reserves the right to locate wells, pumping stations, and tanks within Common Elements or Lots now or subsequently designated for such use or to locate the same upon a Lot with the permission of the Lot Owner. The Association may assign these easements and rights to any Utility Company providing a service or utility to Figure Eight Island subject to the limitations herein.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Dwelling Unit on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Utility Companies shall have easements across the Property for ingress, egress, installation, reading, and providing Upkeep of meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Dwelling Unit on any Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Board.

13.3 Easements for Cross-Drainage. Every Lot and the Common Elements shall be burdened with easements for natural drainage of stormwater runoff from other portions of the Property; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of stormwater onto adjacent portions of the Property without the consent of the Owner(s) of the affected property and the Association. To the extent the Association, by and through the Board or the ARC, approves an application for construction or improvement

pursuant to Section 11 and that construction or improvement results in a violation of this Section by an Owner, the Owner shall indemnify and hold the Association harmless for such approval and for any damage caused to any affected property or its Owner. The Association may cut drain ways on the Property for surface water when such action is determined necessary by the Board to maintain reasonable standards of health, safety, and appearance.

13.4 Right of Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Lot, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board, officers or committees, and by all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner thereof. This easement includes the right to enter any Lot to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any Dwelling Unit without permission of the Owner, except by emergency personnel acting in their official capacities.

13.5 Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Lot to (a) perform its Upkeep responsibilities under Article 6, and (b) make inspections to ensure compliance with the Association Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

The Association also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Declaration, any Supplemental Declaration, the Bylaws, the Design Guidelines, or the rules. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefited Assessment.

The Property is hereby burdened with perpetual, non-exclusive easements in favor of the Association for overspray of water from any irrigation system serving the Common Elements.

13.6 Easements for Upkeep and Nourishment of Beach. The Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Lot, to perform activities necessary for the Upkeep of beach areas, anti-erosion efforts, and general nourishment of the beach areas as determined by the Board in the Board's sole discretion. Such activities also include surveying, pumping, dredging, the

installation of pipes or hoses, protection of bird nesting areas, and other related actions that are designed to preserve the ecology and overall beauty of the beach areas or that are necessary to maintain and preserve the beach area, as determined by the Board in the Board's sole discretion. This easement does not authorize entry into any Dwelling Unit without permission of the Owner.

13.7 Rights to Stormwater Runoff and Water Reclamation. The Association hereby reserves for itself and its designees all rights to ground water, surface water, water within ponds, streams, marsh, channels, and wetlands located within the Property, and stormwater runoff located or produced within the Property, and each Owner agrees, by acceptance of this Declaration, that the Association shall retain all such rights. Such right shall include perpetual easements over the Property for access, and for installation and maintenance of facilities and equipment to capture and transport such water and runoff.

Article 14. Compliance and Enforcement.

14.1 General Remedies. Every Owner and occupant of any Lot shall comply with the Association Documents. Failure to comply shall be grounds for an action by the Association to recover sums due, for damages, injunctive relief or any other remedy available at law and equity.

14.2 Enforcement/Sanctions. The Board, or such other Association agent with the Board's approval, may impose sanctions for violations of Association Documents after notice and a hearing in accordance with the procedures set forth in the Declaration. Such sanctions may include, without limitation:

- (a) Imposing reasonable monetary fines which shall constitute a lien upon the Lot of the violator;
- (b) Suspending a Member's right to vote or an Owner's right to vote;
- (c) Suspending any Person's right to use any recreational facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to prohibit ingress or egress to or from the Lot by any Owner;
- (d) Suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than sixty (60) days delinquent in paying any assessment or other charge owed to the Association; and
- (e) Levying Benefited Assessments to cover costs incurred in bringing a Lot into compliance in accordance with Section 10.3(c).

14.3 Self-Help Remedies. The Board or such other Association agent with the Board's approval, may elect to enforce any provision of the Association Documents by self-help (specifically including, but not limited to, the towing of

vehicles that are in violation of parking Rules and Regulations in accordance with any applicable ordinance(s) of New Hanover County, North Carolina) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in Article 15 or in the Bylaws.

14.4 Cumulative Remedies/Attorney's Fees. The Association shall have all powers and remedies under the Act and the Association Documents which shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Association Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action.

14.5 Association's Right Not to Take Action. The Association shall not be obligated to pursue enforcement action in any particular case, such decisions to be within the discretion of the Board, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (a) the Association's position is not strong enough to justify taking any or further action; or (b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or justify expending Association funds; or, (d) it is not in the best interest of the Association, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such covenant, restriction, rule or provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, rule or provision, nor shall it preclude any Owner from taking action at law or in equity to enforce the Association Documents.

14.6 Enforcement by Owner. Nothing set forth in this Article 14 shall prevent any aggrieved Owner from instituting any available remedy in law or in equity for a violation of the Association Documents.

Article 15. General Provisions.

15.1 Term. This Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of ten (10) years, unless the Owners of Lots to which at least eighty percent (80%) of the votes in the Association are allocated agree to terminate this Declaration.

15.2 Amendment.

(a) Amendment by Affirmative Vote. This Declaration may be amended only by the affirmative vote of, or written agreement signed by, the Owners of Lots representing at least sixty-seven percent (67%) of the total number of Lots. To the extent there is more than one Owner of a Lot, the affirmative vote or signature by one Owner of a Lot shall bind all Owners of the Lot to approval of the amendment to the Declaration, such that the affirmative vote or signature by one such Owner yields the affirmative consent for such Lot to approve the amendment.

(b) Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Register of Deeds unless a later effective date is specified therein. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

15.3 Hearing Procedures. Except as may be otherwise specifically authorized by the Association Documents, and permitted by the Association Documents, the Board shall not (i) impose a fine or penalty, (ii) undertake permitted remedial action, or (iii) suspend voting or infringe upon other rights of an Owner, Member, or other occupant of a Lot or Dwelling Unit for violations of the Association Documents, or for assessments or other amounts due and owing to the Association remaining unpaid for a period of thirty (30) days, or longer, unless and until the following procedure is completed:

Written demand to cease and desist from an alleged violation shall be served upon the Responsible Person specifying (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than five (5) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation may result in the imposition of a sanction after notice and hearing if the violation is not continuing.

(a) Notice. At any time within twelve (12) months following receipt of notice of the alleged violation, the Board, or an adjudicatory panel appointed by the Board, shall serve the Responsible Person (for purposes of this Section 15.3, the "Responsible Person" shall be any Member, Owner, or occupant of a Lot or Dwelling Unit) with a written notice of a hearing to be held by the Board of the Association in closed session or an adjudicatory panel appointed by the Board;

provided, however, any adjudicatory panel appointed by the Board shall be composed of Members of the Association who are not officers of the Association or members of the Board. The notice shall contain: (i) the nature of the alleged violation; (ii) the time and place of the hearing, which shall not be less than ten (10) days from the giving of the notice; (iii) an invitation to attend the meeting and produce any statement, evidence and witness on his or her behalf; and (iv) the possible sanction to be imposed. The notice prescribed herein may be served by mailing a copy of said notice to the alleged violator by placing said notice in the United States mail, postage prepaid, by any method as permitted for the service of summons as set forth in Rule 4 of the North Carolina Rules of Civil Procedure or by the delivery of said notice by the Island Administrator or his designee, or an officer, director, or agent of the Association, to the Responsible Person or to any person who may be served on the Responsible Person's behalf as provided in said Rule 4.

(b) Hearing. The hearing shall be held in closed session of the Board or an adjudicatory panel appointed by the Board pursuant to the notice affording the Responsible Person a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the Responsible Person appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. In addition, a written statement of the results of the hearing and the sanction, if any, imposed shall be mailed by the United States mail, postage prepaid, by the Association to the violator.

(c) Appeal. If the hearing is held before an adjudicatory panel, following such hearing and notice of a decision adverse to the violator, the Responsible Person shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the Island Administrator within ten (10) days after the date of the decision, said written notice to contain information by which the Island Administrator may notify the Responsible Person of the date of the appeal hearing at least two (2) weeks prior to the hearing. If no adjudicatory panel is appointed by the Board, no right of appeal shall exist.

(d) Sanction as Assessment. Pursuant to the provisions of this Section, a fine may be imposed by the Association in an amount not exceeding One Hundred and No/100 Dollars (\$100.00) (or any greater amount as may be provided otherwise by law) per violation of the Association Documents and without further hearing, for each day after five (5) days after the decision to impose such fine that the violation occurs. Any such fine shall be an assessment as set forth in this Declaration and the Act. If it is decided pursuant to the provisions of this Section that a suspension of privileges or services should be imposed, the

suspension may be continued without further hearing until the violation or delinquency is cured.

15.4 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

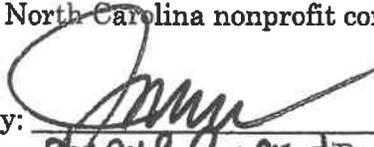
15.5 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least fourteen (14) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. The Association may require the payment of a reasonable administration or registration fee by the transferee. A transferee shall not be a Member of the Association upon acquisition of title to the Lot, as application for membership must be submitted in accordance with the terms of the Bylaws.

15.6 Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in the Association Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Benefited Assessment with respect to the Lot(s) involved in the action.

15.7 Dedication to Public Use. Nothing contained herein shall dedicate or be deemed to dedicate to public use any of the streets, bridges, or other Common Elements within the Property.

IN WITNESS WHEREOF, the Association and the Owners of a majority of the Lots, as evidenced by their signatures below, acting pursuant to the authority above recited, have caused this Declaration to be executed under seal and in such form as to be legally binding and effective the day and year upon recording this Declaration in the office of the Register of Deeds of New Hanover County, North Carolina.

FIGURE "8" BEACH
HOMEOWNERS' ASSOCIATION, INC.
(SEAL)
a North Carolina nonprofit corporation

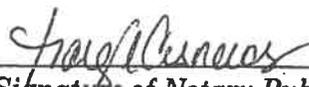
By: 
Joseph B. Dempster Jr. President

STATE OF North Carolina
COUNTY OF New Hanover

I certify that the following person personally appeared before me this day,
acknowledging to me that he/she signed the foregoing document for the purpose(s)
stated therein, in the capacity indicated therein:

Joseph B Dempster Jr., President

Date: June 16, 2020


Signature of Notary Public

Tracy L Cisneros
Notary's printed or typed name

My commission expires: 04-28-2024

(Official Seal)

Tracy L. Cisneros
Notary Public
New Hanover County
North Carolina
My Commission Expires 4/28/2024

Notary seal or stamp must appear within this box.