

AMENDED AND RESTATED
DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS
RADIO ISLAND YACHT & BOATING CLUB, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this _____ day of _____, 2021 BY RADIO ISLAND YACHT & BOATING CLUB, INC. (RIYBC), a North Carolina corporation, hereinafter referred to as either "Declarant" and "Corporation."

STATEMENT OF PURPOSE

Declarant is the owner of certain property in Carteret County, North Carolina, which is more particularly described on a map recorded in Map Book 30, Page 129, in the Carteret County, North Carolina, Public Registry, reference to which is hereby made.

Declarant desires to ensure the attractiveness of RIYBC and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within RIYBC and to provide for the maintenance and upkeep of all common areas in RIYBC. To this end, the Declarant desires to subject the real property described herein, together with such additions as may hereafter be made thereto, to the covenants, conditions,

restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each member thereof.

Declarant further desires to maintain an organization to which will be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities in RIYBC, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created in order to efficiently preserve, protect and enhance the values and amenities in RIYBC, to ensure the members' enjoyment of the specific rights, privileges and easements in the common area, and to provide for the maintenance and upkeep of the common area.

To that end, the Declarant has been incorporated under North Carolina law, RADIO ISLAND YACHT & BOATING CLUB, INC., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions and Restrictions, does declare that all of the property described herein, and such additions thereto as may be hereafter made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration which shall run with the real property and be binding on all parties

owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

Section 1. "Corporation" shall mean and refer to RIYBC, a North Carolina non-profit corporation, with marina and docks recorded in Map Book 30, Page 129

Section 2. "Common Area" shall mean all real property (including the improvements thereto) owned by the Corporation for the common use and enjoyment of the members of the Corporation. The Common Area to be owned by the Corporation will include the Marina Facility, private streets, parking lot, bath facility, and other areas as may be marked on the Map.

Section 3. "Declarant" shall mean and refer to RIYBC.

Section 4. "Map" shall mean and refer to the map of the Existing Property as "recorded in Map Book 30, Page 129, in the Carteret County, North Carolina, Public Registry and the maps of any additions to the Existing Properties which may be recorded by Declarant in the Carteret County, North Carolina, Public Registry hereafter.

Section 5. "Marina" or "Marina Facility" shall mean and refer to that certain facility, including all pilings, piers, docks, and appurtenances thereto, for the docking of pleasure boats and crafts, located of Newport River and Morehead

City Channel southeast of Highway 70 Bridge immediately adjacent to that high land comprising the Existing Property as shown on the Map.

Section 6. "Boat slip" refers to a designated boat space and above the water adjacent to Newport River and Morehead City Channel southeast of Highway 70 Bridge for the docking of a pleasure boat or craft. Such a "boat slip" shall be a portion of the Marina Facility, and are shown diagrammatically on a plat that was recorded.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Corporation by virtue of owning a boat slip.

Section 8. "Properties" shall mean and refer to the "Existing Property" described in Article II, Section I hereof, and such additions thereto as may hereafter be made subject to this Declaration and brought within the jurisdiction of the Corporation.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

AND WITHIN THE JURISDICTION OF

RADIO ISLAND YACHT & BOATING CLUB, INC.

Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Corporation is located in Carteret County, North Carolina, and is more

particularly described on the Map. Declarant shall not modify or recombine boat slips so as to reduce the total number of boat slips to less than 70.

ARTICLE III

DISCLOSURES AND DISCLAIMERS BY DECLARANT

Status of Marina Facility. The Marina Facility is located upon navigable waters and exists solely in accordance with the terms of such permits as have been issued, and remain in effect, by agencies of the United States of America and the State of North Carolina. All rights in and to said Marina Facility and all improvements related thereto are subject to the terms and conditions of such permits, compliance with such terms and conditions, and the continued existence, effectiveness, and renewal (if required) of such permits. In accordance with State regulations and permits, the Marina Facility is a "closed-head," "non-live-aboard" marina. All members, by acceptance of their membership, acknowledge these disclosures by Declarant and agree to accept membership subject thereto. Further, all membership is subject to all of the terms and conditions as stipulated by the North Carolina Division of Coastal Management (CAMA).

ARTICLE IV

MEMBERS AND RIGHTS OF MEMBERSHIP

Section 1. Membership. Each membership shall entitle such member to the exclusive use and enjoyment of one (1) particular boat slip as identified on the

membership certificate. Each member shall have the exclusive right, subject to the provisions hereof and the provisions of the By-Laws and Rules and Regulations issued pursuant hereto, to occupy, possess, and lawfully use that particular boat slip identified on such membership certificate.

Section 2. Common Areas Rights. Each member shall have a nonexclusive right and easement of enjoyment in and to the common areas subject to the right of the Corporation:

(a) To assign particular members the right to the exclusive use and enjoyment of boat slips in the Marina Facility;

(b) To limit the number of guests of members;

(c) In accordance with its Articles and By-Laws, to borrow money for the purpose of improving the properties, common area and facilities;

(d) To suspend all rights of any member for any period during which an assessment against such member remains unpaid or, for a period not to exceed sixty (60) days, for an infraction of its published Rules and Regulations; and to license or otherwise lawfully use all rights of any such member during any such period of suspension; and

(e) To dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose, subject to such conditions as may be agreed to by the members. No such dedication or transfer

shall be effective unless approved by the consent of the membership based upon an affirmative vote of two-thirds (2/3) of the total votes eligible to be cast.

Section 3. Voting Rights. Except as specifically provided in the By-Laws of the Corporation, the voting rights of the members at any meeting of members shall be as follows:

Section 4. Transfer of Membership. There shall be no transfer, assignment, pledge, or lease of any membership or any interest therein except as it relates to the perfection of a security interest herein with a Federal Deposit Insurance Corporation (FDIC) insured corporation without the prior written notification to the Board of Directors following such procedure as may be prescribed in the By-Laws.

ARTICLE V

PROPERTY RIGHTS

Section 1. Ownership of Common Areas. All Common Areas (including the Common Area streets and roads) shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

Section 2. Delegation of Use. Any member may delegate, in accordance with the By-Laws of the Corporation, his right of enjoyment to the Common Area and facilities to the members of his family, his guests, his tenants, or contract purchasers.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. Creation of The Lien and Personal Obligation of Assessments.

Each owner of each membership agrees to pay the Corporation: (1) regular assessments, (2) special assessments, (3) assessments for violations of this DECLARATION, the BY-LAWS, or RULES AND REGULATIONS, and (4) assessments for repairs of damage caused by fault, such assessments to be fixed, established and collected from time to time as hereinafter provided. All such assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the membership and shall be a continuing lien upon the membership against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such membership at the time the assessment fell due. Their personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by such successor.

Section 2. Purpose of Assessments. The assessments levied by the Corporation shall be used as follows:

(a) To maintain the Marina Facility and all pilings, piers, to keep the drainage easements free of pollution and natural debris;

(b) To keep all amenities in the Common Areas clean and free from debris and to maintain all amenities in an orderly condition, and to maintain the landscaping therein in accordance with the highest standards for private marina community including any necessary removal and replacement of landscaping;

(c) To provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals;

(d) To provide garbage removal services for all common areas and the Marina Facility;

(e) To pay all ad valorem taxes levied against the Common Areas and any property owned by the Corporation;

(f) To pay the premiums on all hazard insurance carried by the Corporation on the Common Areas and all public liability insurance carried by the Corporation pursuant to the By-Laws;

(g) To enforce these Covenants and Rules and the Rules and Regulations of the Corporation;

(h) To pay all legal, accounting and other professional fees incurred by the Corporation in carrying out its duties as set forth herein or in the By-Laws;
and

(i) To accumulate and subsequently maintain a contingency

reserve equal to 10% of the sum of the amounts described in subsections (a) through (i) above in order to fund unanticipated expenses of the Corporation.

Section 3. Determination of Regular Assessments

(a) The Board shall determine the amount of regular assessments against members as specified in the By-Laws. Regular assessments against members shall be determined, imposed, levied and collected by the Board.

(b) The Board is specifically empowered on behalf of the Corporation to make and collect regular assessments and to replace, maintain and repair all property of the corporation including the private roads, bulkheads, docks, piers, pilings, bathrooms, pump-out station, and other facilities. Assessments shall be payable periodically as determined by the Board, but no more frequently than monthly.

Section 4. Special Assessments. In addition to the regular assessments authorized above, the Board may levy in any fiscal year, a special assessment or assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvements upon any of the common area and the necessary fixtures and personal property related thereto, or defraying the expenses of operation, maintenance or renovation not adequately funded by regular assessments. Except as specified herein all special assessments shall be

determined, imposed, levied and collected in the manner prescribed in the By-Laws, provided that, if such special assessment exceeds ONE THOUSAND DOLLARS (\$1,000.00) in any fiscal year for any membership, such assessment shall have the approval of a majority of the votes eligible to be cast at a meeting duly constituted for this purpose, written notice of which shall have been sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting setting forth the time, date, place and purpose of the meeting.

Section 5. Assessment for Violations. For the violation by a member or his guest of any rule or regulation adopted by the Board or the breach of any By-Law, or the breach of any provision of the DECLARATION, the Board shall have the power and authority to impose a special assessment against any member not to exceed THREE THOUSAND DOLLARS (\$3,000) for each occurrence. The maximum assessment shall be reserved for severe safety violations, such as failure to remove a boat during a hurricane warning. In assessing a fine of \$1,000 or more, the Board will follow the procedures in North Carolina General Statutes (G.S.) 47C-3-107.1, "Procedures for fines and suspension of condominium privileges or services."

Section 6. Quorum for any Action. The presence at the meeting of memberships or of proxies entitled to cast fifty-one percent (51%) of all the votes shall constitute a quorum.

Section 7. Annual Assessments Due Dates. The regular assessments provided for herein shall commence as to each membership on the first day of the month. The Board of Directors shall fix the amount of the regular assessment against each membership at least thirty (30) days in advance of each fiscal year. Written notice (mail or email) of the regular assessment shall be sent to the member(s) owning each membership. The due dates shall be established by the Board of Directors.

Section 8. Assessments for Repairs of Damage Caused by Fault. If a member, his assignee or licensee, or one of his guests damages or destroys by his or her fault, as determined by the Board, any of the property of the Corporation including the private roads, landscaping, bulkheads, piers, docks and other facilities, the Corporation shall repair the damage or replace the destroyed property as soon as practicable and shall levy an individual assessment upon the owner(s) of that membership for the full cost of repair or replacement.

Section 9. Effect of Non-Payment of Assessments. Remedies of the Corporation. Any assessments or any portions thereof which are not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall become a lien on such membership and bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. No member may waive or otherwise escape liability for

the assessments provided for herein by non-use or abandonment of his membership.

Section 10. Creation of Lien. Recognizing that proper operation and management of the COMMON AREAS require the continuing payment of costs and expenses therefor, and that such proper operation and maintenance result in benefit to all of the owners of memberships, and that the payment of such common expenses represented by the assessments levied and collected by the Board is necessary in order to preserve and protect the property of the owners of memberships, the Corporation is hereby granted a lien upon each membership which lien shall secure the monies due for all assessments now or hereafter levied against the owner of each membership which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Corporation, and which lien shall also secure all costs and expenses, including reasonable attorney's fees, which, may be incurred by the Corporation in securing the payment of such assessment or enforcing this lien upon the membership. The lien granted to the Corporation may be foreclosed in the manner provided by North Carolina G.S. Section 44A-4, and in any suit for the foreclosure of that lien, the Corporation shall be entitled to the appointment of a receiver for that membership. The lien granted to the Corporation shall further secure such advances for taxes and payments on account of superior mortgages, liens, or

encumbrances which may be required to be advanced by the Corporation in order to preserve and protect its lien, and the Corporation shall further be entitled to interest at the rate prescribed above on any such advances made for such purpose. All persons, firms, or corporations who shall acquire, by whatever means, any interest in the ownership of any membership, or who may be given or acquire a mortgage, lien, or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Corporation, and shall acquire such interest in any membership expressly subject to such lien rights.

Section 11. Claim of Lien and Foreclosure. The lien herein granted unto the Corporation shall be enforceable from and after the time of recording a claim of lien in the public records of Carteret County, North Carolina, which claim shall state the description of the membership encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by that lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien, shall be signed and verified by an officer or agent of the Corporation. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied on

record. The Corporation shall be authorized to foreclose on such lien or claim of lien in any manner allowed by law. The lien provided for herein shall be subordinate to the lien of any first mortgage or pledge, and any person, firm or corporation acquiring title to any membership by virtue of any foreclosure, transfer in lieu of foreclosure or judicial sale, shall be liable and obligated only for assessments as shall accrue and become due and payable thereafter. After satisfaction of the lawful claims of such first mortgagee/pledge, the net proceeds from any foreclosure sale or private sale shall first be applied to the payment of all lien claims of the Corporation, and the balance of such sale proceeds shall then be delivered to the owner(s) of the Membership which was subjected to the foreclosure or private sale in lieu of foreclosure. In the event of the acquisition of a membership by foreclosure, transfer in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring the membership shall not be liable shall be absorbed and paid by all owners of all memberships as a part of the common expenses, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from payment thereof :or the enforcement of collection of such payment by means other than foreclosure.

Section 12. Lien Not Exclusive Remedy. Whenever any membership may be licensed, sold or mortgaged by the owner thereof, the Corporation, upon written request of the member(s) shall furnish to the proposed licensee, purchaser or

mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Corporation by such membership. Such statement shall be signed by any officer of the Corporation and any licensee, purchaser, or mortgagee may rely upon such statement in concluding the proposed license, purchase, or mortgage transaction; and the Corporation shall be bound by such statement. In any voluntary conveyance of a membership, the purchaser thereof shall be jointly and severally liable with the seller for all unpaid obligations against the seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the purchaser to recover from the seller the amounts paid by purchaser therefor. Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment, attorneys' fees, interest and costs shall not be deemed to be an election by the Corporation which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sums then remaining owing to the Corporation.

ARTICLE VII

COMMON AREAS AND COMMON EASEMENTS

Section 1. Use of Common Area. The Common Area shall not be used in any manner except as shall be approved or specifically permitted by the

Corporation. Subject to the provisions of the Articles of Incorporation and this Declaration, the Board of Directors of the Corporation shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of all the property of the Corporation, including private roads, marina facility, and parking lot and areas.

Section 2. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on in or upon the property of the Corporation, nor shall anything be done which may be or may become a public or private nuisance as determined by the law of North Carolina.

Section 3. Maintenance of Common Areas. The Corporation shall provide maintenance of all of its properties including roads, marina facility, bulkheads, parking lot and areas, as well as maintenance dredging of the submerged lands of the marina facility. The cost of such maintenance shall be added to and become a part of the total, annual assessment as specified herein and in the By-Laws.

Section 4. Easement Affecting Common Areas. All of the property of the Corporation shall be subject to such easement for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, footings, air conditioning compressors, gas lines, telephone, cablevision and electric power lines and other public utilities as are of record in the Carteret County Registry, prior to the recording of this Declaration; and the Corporation shall have the power

and authority to grant and establish upon, over and under and across all of its properties as described such further easements as are appropriate for the convenient maintenance, repair, use and enjoyment of such properties.

ARTICLE VIII

INSURANCE

Section 1. Corporation and Common Areas. The Board of Directors on behalf of the Corporation, as an operational expense, shall at all times keep it and its property reasonably insured against loss or damage by fire or other hazards normally insured against, and other such risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the interests of the Corporation, which insurance proceeds shall be payable in case of loss to the corporation. The Corporation shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each member to insure his personal property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Corporation be brought into contribution with insurance purchased by members or their pledges or mortgagees.

Section 2. Boats and Crafts. All boats and crafts docked in any boat slip of the Marina Facility shall be covered by liability insurance providing, at a minimum, \$300,000.00 single limit coverage. Proof of such insurance shall be

provided by the member to the Corporation or such agent, property manager, or dock master as it shall appoint.

ARTICLE IX

SALES. MORTGAGES. PLEDGES, AND LICENSES

Section 1. Sale of Membership. In the event that any member desires to sell or transfer his membership, he shall evidence such transfer by executing the transfer provision on the reverse side of his membership certificate and shall deliver said certificate to the Corporation or its agent, requesting issuance of a new certificate to the buyer. Any transfer or sale of any membership by any member shall be subject to all the terms, covenants, limitations and provisions of this Declaration, as well as the By-Laws and Rules and Regulations issued pursuant hereto.

Section 2. Transfer Voidable. Any sale, transfer, conveyance or license of any membership without complying with the provisions of this Article is voidable at the election of the Corporation.

Section 3. Pledging of Membership. No member may pledge or mortgage his membership or any interest therein without the express, prior approval of the Corporation, except a first pledge or mortgage lien made to a bank or other person, firm or corporation to finance a portion of the purchase price of a membership.

The Corporation shall maintain a record of all pledges, mortgages, and liens of which it is notified.

Section 4. Binding Nature: Endorsement of Membership Certificates. The provisions of this article shall be binding upon and inure to the benefit of all the members of the Corporation, their respective heirs, administrators, successors and assigns; and, as further evidence of the binding nature of these provisions, each certificate of membership shall be endorsed as follows:

"Any sale, transfer, pledge, mortgage or lease of this certificate must be done in compliance with the provisions of said Declaration and By-Laws."

ARTICLE X

GENERAL PROVISIONS

Section 1. Governance and Control of Corporation. The Corporation shall be governed by a Board of Directors in accordance with the provisions of the By-Laws.

Section 2. Enforcement. In the event of any violation or attempted violation of any of the restrictions, conditions, covenants, reservations, and provisions hereof, then the Declarant, the Corporation, and/or any member shall have the right to enforce the same by maintaining or prosecuting proceedings at law for the recovery of damages and/or proceedings in equity for the purpose of preventing such violation. The remedies set forth herein shall be construed as

cumulative of all other remedies now or hereafter provided by law. Failure to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. Rules and Regulations. Rules and Regulations governing the use and appearance of the Common Area, conduct of members and guests, and use and care of the Marina Facility may be made by the Board of Directors and thereafter amended in accordance with the By-Laws.

Section 5. Duration and Binding Effect. The covenants, conditions and restrictions of this Declaration shall run with the land, shall be binding insofar as the law permits, and shall be enforceable for a term of twenty (20) years from the date this Declaration is recorded, after which time such covenants shall be automatically extended for successive periods of ten (10) years each.

Section 6. Amendment. This Declaration may be amended by the Corporation upon an affirmative vote of not less than sixty-seven percent (67%) of the total votes eligible to be cast in the Corporation, any such amendment to be evidenced by a written instrument recorded in the Carteret County Registry.

Section 7. Effective Date. This Declaration shall become effective upon the recording hereof in the Carteret County Registry.

IN WITNESS WHEREOF, the Radio Island Yacht & Boating Club, the Declarant, has caused this instrument to be executed the day and year first above written.