

BYLAWS OF  
SHALLOWBAG BAY CLUB  
CONDOMINIUM OWNERS ASSOCIATION, INC.  
NORTH CAROLINA  
DARE COUNTY



BYLAWS  
OF  
SHALLOWBAG BAY CLUB OWNERS ASSOCIATION, INC.

ARTICLE I  
Identity

These are the Bylaws of Shallowbag Bay Club Owners Association, Inc., a North Carolina Nonprofit Corporation, (the "Association"), the Articles of Incorporation (the "Articles") of which have been filed in the Office of the North Carolina Secretary of State. The Association shall serve the Condominium Unit Owners of Shallowbag Bay Club Condominium.

ARTICLE II  
Purposes and Powers

The purposes for which this corporation is organized are:

2.1. The operation and management of condominium units known as SHALLOWBAG BAY CLUB CONDOMINIUM which will be established in accordance with Chapter 47C of the General Statutes of North Carolina, the North Carolina Condominium Act and to that end shall have power and authority as follows:

- (a) To undertake the performance of and carry out the acts and duties incident to the administration of the operation and management of Shallowbag Bay Club Condominium in accordance with the terms, provisions, conditions and authorization contained in the Articles, the Bylaws and in the Declaration of Condominium of Shallowbag Bay Club Condominium (the "Declaration").
- (b) To make, establish and enforce reasonable rules and regulations governing the use of condominium units, common elements, limited common elements, condominium property and real and personal property which may be owned by the Association itself.
- (c) To make, levy and collect assessments against condominium unit owners; to provide the funds to pay for Common expenses of the condominium units as provided in the condominium documents and the North Carolina Condominium Act and, to use and expend the proceeds of assessments in the exercise of the powers and duties of the Association.
- (d) To maintain, repair, replace and operate the condominium property, specifically including all portions of the condominium property to which the Association has the right and power to maintain, repair, replace and operate in accordance with the condominium documents and the North Carolina Condominium Act;
- (e) To reconstruct improvements within the condominium property in the event of casualty or other loss;
- (f) To enforce by any legal means, the provisions of the condominium documents, including the Declaration, the Articles, the Bylaws of the Association, and the rules and regulations for the use of the condominium property;

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(g) To contract for the management of the condominium, if so desired, and to delegate to such manager or managers all powers and duties of the Association except those powers and duties which are specifically required by the Declaration to have approval of the Board of Directors or the membership of the Association.

2.2. The Association shall have all the common law and statutory powers of a nonprofit corporation which are not in conflict with the terms of the Condominium Declaration, the Bylaws and the North Carolina Condominium Act.

ARTICLE III

Membership; Members' Meetings and Voting

3.1. Members. Each Unit Owner shall be a member of the Association, and shall remain a member until he ceases to be a Unit Owner. Membership shall be established by acquisition of fee title to a condominium unit in Shallowbag Bay Club Condominium. A new owner designated in such deed or other instrument shall thereupon become a member of the Association, and the membership of the prior owner as to the condominium unit designated shall be terminated. Each new Owner shall deliver to the Association a true copy of such deed or instrument of acquisition of title.

3.2. More Than One Owner. When there is more than one Unit Owner of a Unit all such persons shall be members of the Association.

3.3. Registration. It shall be the duty of each Unit Owner to register his name and the number of his Unit with the Secretary of the Association. If a Unit Owner does not so register, the Association shall be under no obligation to recognize his membership.

3.4. Prohibition of Assignment. The interest of a member in the Association assets cannot be transferred or encumbered except as an appurtenance to his Unit.

3.5. Place. Meetings of the members shall be held at the registered office of the Association, or such other place within Dare County, North Carolina as may be designated from time to time by the Board.

3.6. Annual Meeting. The members shall meet at least once each year as specified in the notice of such meeting given pursuant to Section 3.8. At each annual meeting the members shall elect members of the Board ("Directors") and may transact any other business properly coming before them.

3.7. Special Meetings. Special meetings of the members may be called at any time by the President or by a majority of the Board, and shall be called and held within thirty (30) days after written request therefor signed by members of the Association entitled to cast at least twenty-five (25%) percent of the total votes in the Association is delivered to any officer or Director of the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof. The Board in its discretion may call separate meetings for Residential Unit owners, Commercial Unit Owners, and/or Marina Unit Owners respectively when the business pertains solely to issues relating to one type of Unit owner.

3.8. Notices. Notice of all meetings of the members, stating the time and place, and accompanied by a complete agenda thereof including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes and any proposal to remove a Director or officer, shall be given by the President or Secretary to each member. Such notice shall be in writing, and shall be hand delivered or sent by United States mail to the members at the addresses of their respective Units and to other addresses as any member may have designated to the President or Secretary, at least ten (10) days in advance of any annual or regularly scheduled meeting and at least ten (10) days in advance of any other meeting and not more than sixty (60) days in advance of any meeting.

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3.9. Quorum; Adjournment if no Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least twenty (20%) percent of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present.

3.10. Votes. The total votes in the Association are allocated to Units by the Declaration. The votes allocated to a Unit may be cast by the Unit Owner of that Unit. When there is more than one Unit Owner of a Unit, the votes for that Unit shall be cast as they shall determine. The votes allocated to a whole unit shall not be split, but shall be voted as a single whole. Where there is more than one Unit Owner of a Unit and said Unit Owners cannot agree on how the vote for that whole Unit shall be cast, then those holding the majority interest in the Unit shall be entitled to cast the vote. If those holding a majority interest in the Unit cannot agree on how the vote shall be cast, then the Unit shall not be entitled to vote. The Association shall not be entitled to cast any votes allocated to any Unit owned by it.

3.11. Manner of Casting Votes. Votes may be cast in person or by proxy. A proxy must be in writing, be signed by all Unit Owners of the Unit, the votes of which are subject to the proxy. The proxy may only be given to another member of the Association or to a Security Holder in that Unit and must be filed with the Secretary on or before the date of the meeting. A proxy shall be valid until revoked in writing by all Owners of such Unit.

3.12. Required Votes. All questions shall be decided by a majority of the votes cast on the question, unless the provisions of applicable law, the Declaration or these Bylaws require a greater vote.

3.13. Action by Members Without Meeting. Any action that may be taken at a meeting of the members, may be taken without a meeting if such action is authorized in writing setting forth the action taken and is signed by all members, or if such action is taken in any other manner permitted by law.

3.14. Prohibition of Cumulative Voting. There shall be no cumulative voting.

**ARTICLE IV  
Directors**

4.1. Initial Directors. The number of Directors constituting the initial Board of Directors shall be three (3) and the names and addresses of the persons who are to serve as the first Board of Directors are as follows:

NAME	ADDRESS
James M. Rose, Jr.	225 Eagle Drive, Kill Devil Hills, NC 27948
Mary M. Rose	225 Eagle Drive, Kill Devil Hills, NC 27948
Matthew Tappero	7013 Martins Point Road, Kitty Hawk, NC 27949

4.2. First Election. The first election by the members of the corporation for Directors shall not be held until after the Developer has relinquished control of the Association as described in Section 4.3. Thereafter, the election of Directors shall take place at the annual meeting of the membership as provided in these Bylaws. After the Developer has relinquished control, there shall be a special meeting of the membership for the purpose of electing a Board of Directors to serve until the next annual meeting and until new Directors are elected.

4.3. First Board.

(a) The first Board shall consist of the three (3) persons elected by the Developer, and successors to any thereof elected by the Developer. The Developer shall have the right to appoint Directors. However, Declarant's

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control shall terminate no later than the earlier of (i) one hundred and twenty (120) days after conveyance of seventy-five (75%) percent of the Units (including Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant; (ii) two (2) years after all Declarant's have ceased to offer Units for sale in the ordinary course of business; or (iii) within three (3) years after the date of the first conveyance of a Unit to a Unit Owner other than the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of that period, but in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. Declarant shall have the unilateral right to remove any person or persons selected by it to act and serve on the Board and to replace such person or persons with another person or person to act and serve in the place of any director or directors so removed. Any director designated and selected by the Declarant need not be a Unit Owner. Any representative of the Declarant serving on the Board shall not be required to disqualify himself from any vote upon contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest.

(b) Not later than sixty (60) days after conveyance of twenty-five (25%) percent of the Units (including units which may be created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant, at least one (i) member and not less than twenty-five (25%) percent of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty (50%) percent of the Units (including Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than Declarant, not less than thirty-three (33%) percent of the members of the Board of Directors shall be elected by Unit Owners other than the Declarant.

4.4. Number and Qualification of Directors. The Board shall consist of three (3) natural persons, one of which must be a Marina Unit owner, as determined at any annual meeting by the members. Each Director shall be a Unit Owner or the individual nominee of a Unit Owner which is other than an individual.

4.5. Election of Directors. At the annual meeting of the members, the members shall elect the Directors by a majority of the votes cast in the election.

4.6. Term. The terms of the Directors shall be staggered so that at least one (1) but not more than two (2) Directors are elected at anyone meeting and so that no Director's term is less than one (1) year nor more than three (3) years. The Directors shall establish rules to implement the provision of this section. Once elected, a Director shall hold office until his successor has been duly elected.

4.7. Removal. The members, by at least sixty-seven (67%) percent vote of all persons present and entitled to vote at any meeting of the Association at which a quorum is present, may remove any member of the Board of Directors with or without cause, other than Directors appointed by the Declarant. The successor may then be elected by the members to serve for the balance of the removed Director's term.

4.8. Vacancies. Any vacancy in the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.

4.9. Regular Meeting. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, telegraph or fax at least seventy-two (72) hours prior to the meeting.

4.10. Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request therefor signed by two (2) Directors is

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delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours notice of such special meeting shall be given personally or by mail, telephone, telegraph or fax to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notice of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice hereof.

4.11. Quorum: Adjournment if No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

4.12. Manner of Acting. Each Director shall be entitled to One (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provision of applicable law, the Declaration or these Bylaws.

4.13. Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by all Directors.

4.14. Compensation of Directors Restricted. Directors shall receive no compensation for their services, but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

4.15. Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, or delegated to a professional management firm appointed by the Board pursuant to the Declaration, including those powers and duties existing under the common law, applicable statutes, the Act, the Declaration, the Articles, and these Bylaws, as any thereof may from time to time be amended. The term of such management contract may not exceed five (5) year(s) but may be renewable or not renewable at the option of either party. Such powers and duties shall be exercised in accordance with the provision of applicable law, the Declaration, the Articles, and these Bylaws, and shall include, but not be limited to, the following:

- (a) To prepare and have available upon request, a report containing at least the following:
  - (i) A statement of any capital expenditures in excess of ten (10%) percent of the current budget or Ten Thousand Dollars (\$10,000), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.
  - (ii) A statement of the status and amount of any reserve or replacement and any portion of the funds designated for any specified project by the Board.
  - (iii) A statement of the financial condition of the Association for the last fiscal year.
  - (iv) A statement of the status of any pending suits or judgments in which Association is a party.
  - (v) A statement of the insurance coverage provided by the Association.
  - (vi) A statement of any unpaid assessments payable to the Association, identifying the Unit and the amount of unpaid assessments.

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- (b) To adopt and amend budgets and to determine and collect assessments to pay the Common Expense.
- (c) To regulate the use of, and to maintain, repair, replace, modify and improve the Common Areas.
- (d) To adopt and amend rules and regulations and to establish reasonable penalties for infractions thereof.
- (e) To enforce the provision of the Declaration, the Articles, these Bylaws, the Act, and rules and regulation by all legal means, including injunction and recovery of monetary penalties.
- (f) To hire and terminate managing agents, if so desired, and to delegate to such agents such power and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these Bylaws, or the Act, to be done by the Board or the members.
- (g) To hire and terminate agents and independent contractors.
- (h) To institute, defend, intervene in, or settle any litigation or administrative proceeds in its own name on behalf of itself or two (2) or more Units Owners on matters affecting the Condominium, the Common Elements, or more than one Unit interest.
- (i) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.
- (j) To borrow money for the maintenance, repair, replacement, modification or improvement of Common Elements and to pledge and pay assessments, and any and all other revenue and income, for such purpose.
- (k) To buy Units in foreclosure of an assessment lien, or at any other time or for any other reason, and to sell, lease, mortgage, and otherwise deal in Units from time to time owned by the Association. The Association is authorized to bid and purchase a Unit at its own foreclosure sale.
- (l) To impose and receive payment, fees and charges for the use, rental or operation of the Common Elements other than the Limited Common Elements, except for elevators, stairways, hallways and other portions of the Common Elements which provide access to the Units.
- (m) To grant leases, licenses, concessions and easements through and over the Common Elements.
- (n) To impose and collect reasonable charges, including reasonable costs and attorneys' fees, for the evaluation, preparation and recordation of amendments to the Declaration, resale certificates required by Section 47C-4-109 of the Act, or certificates of unpaid assessments.
- (o) To provide for indemnification of the Association's officers and Directors and maintain officers' and Directors liability insurance.
- (p) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violation of the Declaration, the Bylaws or the rules and regulations.

**ARTICLE V  
Officers**

5.1. Designation of Officers. The officers of this Association shall be a President, one Vice President, one Secretary, and one Treasurer. Each officer shall be a Unit Owner or the individual nominee of a Unit Owner which is

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other than an individual. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association. The Board may elect an assistant Secretary and an assistant Treasurer, and such other officers as in its judgment may be necessary.

5.2. Election of Officers. Officers of the Association shall be elected by the Board. Election shall be held annually at the first meeting of the Board held after the annual meeting of the members, except that the first Board shall elect Officers as soon as practical after filing of the Declaration.

5.3. Term. Each officer shall serve until his successor has been duly elected.

5.4. Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

5.5. Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

5.6. Powers and Duties of Officers.

(a) President. The President shall be the chief executive officer of the Association; shall have all of the powers and duties incident to the office of a president of a corporation, including, but not limited to, the duty to preside at all meetings of the members, and the general supervision of officers in the management of the business and affairs of the Association; and shall see that all actions and resolutions of the Board are carried into effect.

(b) Vice President. The Vice President shall perform such duties of the President as shall be assigned to him by the President, and in the absence of the President shall perform the duties and functions of the President.

(c) Secretary. The Secretary shall keep the minutes of all meetings and action of the Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, security, and evidences of indebtedness; shall keep, or cause to be kept, the books of the Association in accordance with good accounting practices and principals, and, upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all moneys and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

5.7. Execution of Agreements, etc. All agreements, deeds, mortgages, and amendments to the Declaration or Bylaws, or other such instruments shall be executed by any two (2) officers, or by such other person or persons as may be designated by the Board.

5.8. Compensation of Officers Restricted. No officer shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

ARTICLE VI  
Indemnification of Directors and Officers

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The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent as permitted by North Carolina General Statutes Chapter 55A, Article 8 as now enacted or hereafter amended.

**ARTICLE VII  
Fiscal Management**

- 7.1. **Depository.** The Board shall designate a depository for the funds of the Association, and may change such depository. Withdrawal of funds from such depository shall be only by checks signed by any two officers of the Association, or any officer and one other person authorized by the Board. Separate accounts shall be maintained for the Residential Unit, Commercial Unit, and Marina Unit assessments.
- 7.2. **Fidelity Bonds.** Fidelity bonds may be maintained by the Association, in an amount determined by the Board, covering each director and officer of the Association, any employee or agent of the Association and any other person, handling or responsible for handling funds of the Association.
- 7.3. **Payment Vouchers.** Payment vouchers shall be approved by the Board, provided that the Board may delegate such authority to any officer or managing agent of the Association.
- 7.4. **Annual Audit.** A compilation and review and/or audit of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the report will be made available upon request.
- 7.5. **Fiscal Year.** The fiscal year of the Association shall be the calendar year provided that the Board, from time to time, by resolution, may change the fiscal year to some other designated period.

**ARTICLE VIII  
Assessments**

- 8.1. **Obligation of Members to Pay Assessments; Amount of Levy.** Until the Association levies a Common Expenses assessment, Declarant shall pay all accrued expenses of the Condominium. Thereafter, each Unit Owner shall be personally and severally liable for the common expenses that are levied against his Unit while an owner. Each Unit Owner shall be assessed in accordance with that Unit's percentage of common Expenses as allocated by the Declaration, as amended.
- 8.2. **Allocation of Common Surplus.** Any common surplus, including funds in reserve accounts, may be allocated to each Unit in accordance with its interest in the Common Expenses, and, if allocated, shall be owned by the Unit Owner and may be paid to the Unit Owner or credited against future assessments.
- 8.3. **Preparation of Budget and Levying of Assessment.** For each fiscal year, beginning with the fiscal year beginning January 1, 2002, the Board shall prepare and adopt a budget for the Condominium, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. Such budget may include sections relating exclusively to Residential Units, Commercial Units, and/or Marina Units. Within thirty (30) days after adoption of any proposed budgets for the Association, the Board of Directors shall provide a summary of the budget to all of the respective Unit Owners and shall set a date for a meeting of the respective Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget is deemed ratified unless at that meeting a majority of the Unit Owners rejects the budget. In the event the proposed budget is rejected, the budget for the period last ratified shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors.



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The assessment shall be deemed levied upon the ratification of the respective budget.

8.4. Assessment a Lien. Every assessment shall constitute a lien upon each Unit assessed from the date the assessment is levied, prior to all other liens except only (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the Office of the Clerk of Superior Court of Dare County, and (ii) liens for real estate taxes and other governmental assessments or charges against the Unit.

8.5. Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Payment shall be made to the Association, or as the Board may from time to time otherwise direct.

8.6. Funds and Reserves. The reserve fund for repairs and replacement shall be established by the Board and shall be funded thereafter by regular installments rather than by extraordinary special assessments if at all possible. The reserve funds described above shall be maintained only in such amounts as deemed necessary or desirable by the Board, subject, however, to the preceding sentence. To the extent maintained, funds therein shall be held in such accounts, and with such depositories as the Board, in its discretion, selects.

8.7. Special Assessments. In addition to the assessments levied pursuant to Section 8.3, the Board, in its discretion, may levy special assessments at such other and additional times as in its judgment are required for:

- (a) Maintenance, repair, restoration and reconstruction of the Common Elements, and operation of the Condominium.
- (b) Alterations, improvements, and additions to the Common Elements; provided, however, that any such special assessment involving an expenditure in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000) shall be first approved by the members entitled to cast at least fifty-one (51%) percent of the total votes in the Association at a regular or special meeting of the Association.
- (c) Payment of cost and expenses incurred in curing defaults pursuant to Sections 10.1 and 10.3 hereof.

Special assessments made pursuant to this Section shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

8.8. Common Expenses Associated with Limited Common Elements or Benefitting Less Than All Units. The Association is not obligated to assess any item of Common Expenses benefitting less than all of the Units against the Units benefitted in proportion to their Common Expense Liability. It is the intent that in almost all circumstances, Common Expenses benefitting less than all of the Units shall be assessed against all Units, except in very unusual situations.

8.9. Failure to Prepare Budget and Levy Annual Assessment; Deficiencies in Procedure. Failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.3, each member shall continue to pay the assessment then previously levied pursuant to Section 8.3 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessments.

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8.10. Assessment Roll; Certificate. All assessments shall be set forth upon a roll of the Units which shall be available in the office of the Association for inspection at all reasonable times by members and Security Holders, and their duly authorized representatives. Such roll shall include, for each Unit, the name of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Unit Owner, or his authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against his Unit. The certificate shall be furnished within 7 business days after receipt of the request and shall be binding upon the Association and all Unit Owners. For such certificate a reasonable fee may be charged by the Board.

8.11. Default and Enforcement.

(a) If any assessment, or installment thereof, remains delinquent for thirty (30) days, then that assessment, and all other assessments then a lien against that Unit, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided by Section 47C-3-116 of the Act. All fees, late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

(b) If any action is taken by the Association to foreclose a lien on a Unit because of unpaid assessments, the Unit Owner shall be required to pay a reasonable rent for the use of the Unit during the period of redemption from such foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same.

(c) In addition to the foregoing, and without waiving its lien, the Association may sue to obtain a money judgment for the amount of any delinquent assessment, or installment thereof, together with interest, and the member so sued and liable for such assessment shall pay all costs of collection, including reasonable attorneys' fees, with interest thereon at the same rate as charged on the assessments being collected from the date incurred until paid.

8.12 Interest on Delinquent Assessments. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but all delinquent sums shall bear interest at the rate of eighteen (18%) percent per annum. Furthermore, the Association may levy a late charge not to exceed the greater of five (5%) percent of the delinquent assessment or \$25.00 for each installment of an assessment not paid on time. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof longest delinquent, then to any late payment charge.

8.13. Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by the Act, or by any specific provision of these Bylaws, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the Property until the Units are separately assessed; premiums for any and all insurance maintained by the Association, except insurance which is specifically allocable to the interior portions of a Condominium Unit, including the furniture, fixtures and equipment as contained therein; for those types of insurance that are Common Expenses, it shall also include any deductible or coinsurance amount not covered by insurance; utility charges associated with the Common elements; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding; deficits remaining from any prior assessment period; the cost, including fees and interest, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements or the Property by, or incurred by the Association as a result of the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Elements or Property, or any part of either thereof, is or may be subject; amounts determined necessary for reserve funds; indemnity payments made by the Association pursuant to Article VI

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hereof; and Common Area Maintenance including but not limited to signage, parking areas, sidewalks, bulkheads, docks, decks, landscaping and lighting.

8.14. Frequency of Assessment; Amount of Assessment. Association assessments shall be due from each Unit Owner once each year, or at such other interval as the Board may establish, and shall be due and payable in advance. The annual assessment provided for herein shall commence on the date that the first Unit is conveyed by the Declarant, with such annual assessment being prorated as necessary. The initial assessment amount shall be One Thousand Eight Hundred and 00/100 Dollars (\$1,800.00) for Residential Units and Commercial Units, and One Thousand Two Hundred and 00/100 Dollars (\$1,200.00) for Marina Units; however, this assessment amount shall be subject to review and increase as provided for in the Declaration.

ARTICLE IX  
Alteration of Units

9.1. Procedure. Subject to the provisions contained in the Declaration, if any Unit Owner becomes the owner of adjoining Units and desires to (i) remove partitions or create doorways or other apertures, or (ii) make any improvement or alterations to his Unit which might impair the structural integrity or mechanical system of, or lessen the support of any portion of, the Condominium, the procedure set out in this Article shall be followed.

9.2. Notice To and Consent of Board. Prior to doing any work of the kind set out in Section 9.1, the member shall give notice to the Board of his intent to do such work and request and receive the written consent thereto of the Board or, on appeal, the Association. With such notice shall be given (i) a statement of the work to be done, (ii) a copy of the plans and specifications for the work, and (iii) such additional information relative to the proposed work as the Board may reasonably request. Upon receiving all such information and any fees and charges requested by the Board, the Board shall set a date for a meeting on the proposed work which shall be within fifteen ( 15) days after such information and fees and charges are received. Notice of such meeting shall be given to all members of the Board in the same manner as a notice of a special Board meeting. At the meeting, the Board shall receive such testimony and evidence as it deems appropriate. The meeting may be continued from time to time by the Board. At the meeting or at such later time but, in any event, not later than sixty (60) days after such meeting, the Board shall decide whether to consent or not to consent to such work. Written notice of such decision shall be given to said member and all members.

9.3. Appeal to Association. The Unit Owner proposing to do the work, or members representing twenty-five (25%) percent or more of the total votes in the Association, may appeal the decision of the Board to the Association by filing a signed written request for an Association meeting on the work proposal. The written request must be filed with the Secretary within ten (10) days of the date of the notice of the Board's decision.

9.4. Meeting and Decision of Association. Upon filing of an appeal, a special meeting of the members of the Association shall be called. The notice of meeting shall be sent out within ten (10) days after such filing, and the meeting shall be held within thirty (30) days after such filing. The meeting may be continued from time to time by the chairman. The provisions of Article III hereof shall apply to such meeting. At such meeting the members shall decide to consent or not to consent to such work. The decision of the Association shall be final.

9.5. Fees. The Board may require the Unit Owner proposing to do the work to pay reasonable fees and charges to cover the costs to be incurred by the Association in giving notice of and holding meetings pursuant to this Article.

9.6. Conditions. The Board or, on appeal, the Association, may impose conditions on any consent to such work to protect the Common Elements, Units and the Condominium, and to insure the provisions of the Act, Declaration and these Bylaws are complied with, including, without limitation, the furnishing to the Association of payment and

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performance bonds, or other security acceptable to the Board, to ensure that the proposed work is timely completed pursuant to the plans and specifications therefor and all cost thereof paid.

9.7. Controlling Procedure. The procedure set out in this Article shall control over any contrary provision in the Act.

ARTICLE X  
Compliance, Enforcement, Fines and Penalties

10.1. Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Act, the Declaration, these Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any member or occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved member, or by any person or class of persons adversely affected. Also, if any member fails to perform any obligation under the Act, the Declaration, these Bylaws, the Articles or such rules and regulations, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his Unit, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Unit owned by such defaulting member. The Association shall also be entitled to suspend the right of a defaulting member to vote as a member of the Association, and shall have the power to suspend the privileges and rights of the Owner, his Occupants, invitees and guests, to use any recreational facilities of the Condominium Common Area appurtenant thereto, for any period of time during which and until the default is cured.

10.2. Notice of Default and Failure to Cure. In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting member may cure the default specified, or serve upon or mail to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and the Board has made its determination and served upon or mailed the same to the defaulting member. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise anyone or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the defaulting member a copy of its determination. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall serve upon or mail to the defaulting member a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief.

10.3. Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in (i) or (ii) of Section 10.2 hereof, whichever is applicable, where the default is a structure, thing, or condition existing in or on the premises of the member's Unit, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the members' Unit in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefor as provided in Section 10.1 hereof), the structure, thing, or condition constituting the default, and the

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Board, the Association, and their agents, employees and representatives shall not thereby be deemed guilty of any manner of trespass.

10.4. Injunction. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 10.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

10.5. Recovery of Attorney's Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court, with interest thereon at the rate of eighteen (18%) percent per annum, from the dates such costs are incurred until paid.

10.6. Nonwaiver of Covenants. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these Bylaws, the Articles, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

10.7. Assessment Liens. Assessments liens shall be enforced pursuant to Article VIII hereof and not pursuant to this Article X.

ARTICLE XI  
Amendment

These Bylaws may be amended or repealed and new Bylaws may be adopted. The proposed new Bylaws shall be submitted by the Board of Directors to the members. The members may adopt, amend or repeal the Bylaws by a vote of fifty one (51%) per cent or more of the total votes of the Association.

ARTICLE XII  
General Provisions

12.1. Rules and Regulations.

(a) By the Board. The Board may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation, and use of the Common Elements so as to promote the common use and enjoyment thereof by members and occupants and for the protection and preservation thereof. In addition, the Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Units to provide for the common good and enjoyment of all members and occupants, including, without limitation, the right to adopt such rules and regulations with reference to tenants and leases. In no event shall any rules or regulations be inconsistent or materially more restrictive than the provisions contained in the Declaration and these Bylaws with respect to leases or tenants.

(b) By the Association. Any such rule or regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by members at an annual or special meeting of the members. Any such act of the members shall control over any contrary rules or regulations then or thereafter adopted by the Board.

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(c) Uniform Application. All rules and regulations shall be equally and uniformly applicable to all members, occupants and units, but need not be equally and uniformly applicable if it is determined that such unequal and nonuniform application is in the best interest of the Association or if equal and uniform application is not practicable.

(d) Copies Furnished. Copies of all such rules and regulations and any amendment thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to members at the office of the Association. However, failure to furnish, or post, or make available, such rules and regulations shall not affect in any way their validity or enforceability.

(e) Rules Hereby Established.

(i) With the exception of the Commercial Units as defined in the Declaration, the Condominium Units are restricted to single family residential use only shall not be used for commercial purposes.

(ii) No member shall make structural modifications or alterations within his Unit therein unless he has previously obtained approval therefore, in writing, from the Board of Directors of the Association.

12.2. Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceedings when not in conflict with the Declaration, these Bylaws, the Articles, the Act, or any statutes of the State of North Carolina applicable thereto. The Chairman of the meeting shall have the authority to appoint a parliamentarian.

12.3. Compliance with the Act; Conflict; Severability. These Bylaws are established in compliance with the Act, as amended. Should any of the terms, conditions, provision, paragraphs, or clauses of these Bylaws conflict with any of the provisions of said Act, the provision of said Act shall control unless the Act permits these Bylaws to override the Act, in which event these Bylaws shall control. In the case of any conflict between the provision of these Bylaws and the Declaration, the Declaration shall control. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

12.4. Compliance with Declaration. The Association shall be responsible and shall comply with all terms of the Declaration of Condominium filed for the Condominium including but not limited thereto those provisions dealing with the maintenance of insurance, repairs and maintenance of the Common Elements, assessments and rights of entry.

**AMENDMENT TO THE BYLAWS OF  
SHALLOWBAG BAY CLUB OWNERS ASSOCIATION, INC.**

THIS AMENDMENT TO THE BYLAWS OF SHALLOWBAG BAY CLUB OWNERS ASSOCIATION, INC. (the “*Amendment*”), is made this 24<sup>th</sup> day of October, 2015 by the Members of SHALLOWBAG BAY CLUB OWNERS ASSOCIATION, INC. (the “*Association*”). Capitalized terms not defined herein shall have the meanings set forth in the Bylaws of the Association (the “*Bylaws*”). The Bylaws are hereby amended as follows:

1. Article III, Section 3.8 of the Bylaws shall be amended by deleting this section in its entirety and inserting in lieu thereof the following (new language appears in bold type):

3.8 Notices. Notice of all meetings of the members, stating the time and place, and accompanied by a complete agenda thereof including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes and any proposal to remove a Director or officer, shall be given by the President or Secretary to each member. Such notice shall be in writing, and shall be hand delivered, **or sent via email to such email address as any member may have designated beforehand to the President or Secretary**, or sent by United States mail to the members at the addresses of their respective Units and to other addresses as any member may have designated to the President or Secretary, at least **thirty (30)** days in advance of any annual or regularly scheduled meeting and at least **thirty (30)** days in advance of any other meeting and not more than sixty (60) days in advance of any meeting.

2. This Amendment shall be effective as of the date it has been duly approved by the requisite number of Members of the Association.

3. Except as amended hereinabove, the remaining portions of the Bylaws as originally existed are hereby restated and re-acknowledged.

WHEREFORE, the Secretary has hereunto affixed the corporate certification for the purpose of enacting the foregoing Amendment.

[Signature page follows]

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of the Shallowbag Bay Club Owners Association, Inc., a North Carolina non-profit corporation, and,

THAT the foregoing Amendment constitutes a valid amendment to the Bylaws of the Association, as duly adopted at a meeting of the Members thereof, held on \_\_\_\_\_, 2015.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 24<sup>th</sup> day of October, 2015.

**SHALLOWBAG BAY CLUB OWNERS  
ASSOCIATION, INC.,**  
a North Carolina non-profit corporation

By: Denise S. Carter  
Its: Secretary