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BY: KELLIE GILES

DEPUTY

NEW HANOVER COUNTY,**MORGHAN GETTY COLLINS**

REGISTER OF DEEDS

EXTX \$0.00

ELECTRONICALLY RECORDED

**FORTH AMENDMENT TO THE DECLARATION OF COVENANTS,
RESTRICTIONS, PROPERTY OWNERS ASSOCIATION AND LIMITATIONS RUNNING WITH
THE LAND FOR PRESERVATION POINT SUBDIVISION
PROVIDING FOR DOCK OWNERS ASSOCIATION**

This Amendment to Restrictive Covenants entered into this 16th day of November, 2023, by PRESERVATION POINT PARTNERS, LLC (hereinafter, "Declarant") and all Private Boat Slip Owners of "Preservation Point" Subdivision, as shown in Plat Book 69 at Pages 179-190 of the New Hanover County, North Carolina Public Registry (herein "Subdivision");

W I T N E S S E T H:

WHEREAS, the undersigned was the subdivider and sole Owner of all Private Boat Slips within the Subdivision; and

WHEREAS, the, undersigned, Declarant placed restrictive covenants which are appurtenant to the properties that comprise the Subdivision, which said restrictive covenants are recorded in Deed Book 6876 at Pages 976, amended at Deed Book 6478, Page 861; Deed Book 6644, Page 1036 and Deed Book 6673, Page 1426, all of the New Hanover County Registry (hereinafter together referred to as, "Declaration as Amended"); and,

WHEREAS, the Second Amendment to the Declaration was recorded at Deed Book 6644, Page 1036 of the New Hanover County Registry was to create a Marina Property Owners Association with other modifications, and the Declarant has opted to instead create a Dock Owners Association (DOA) with other modifications to that Second Amendment; and

WHEREAS, the Declarant is still in control of Preservation Point POA, Inc. (hereinafter, "Association") and pursuant to 9.2 of the Declaration as Amended is empowered to amend such declaration as it may deem necessary; and,

WHEREAS, further development required further amendment to those Restrictive Covenants as mentioned above.

NOW, THEREFORE, for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Undersigned Declarant hereby deletes the Second Amendment as recorded in Deed Book 6644, Page 1036 of the New Hanover County Registry in its entirety and amends and modifies the Declaration and Amended as follows:

submitted electronically by "Brian A. Martin, LLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the New Hanover County Register of Deeds.

1. Paragraphs 1.15 and 1.17 of the Declaration as Amended shall be deleted and modified and Paragraph 1.27 shall be added to read as follows:
 - 1.15 PRIVATE BOAT SLIP shall refer to those individual boat slips attached to the Docks built by the Declarant for the purpose of being purchased and transferred to Owners, Commercial Owners, and Unit Owners.
 - 1.17 DOCKS shall refer to all the slips constructed on the Cape Fear River and connected to the Common Property of the Subdivision.
 - 1.27 SLIP OWNER shall refer to a person or entities, whether one or more, who have been transferred the exclusive rights to use a Private Slip.

2. Paragraph 1.14(a) of the Declaration as Amended shall be added to read as follows:
 - 1.14 (a) UNIT OWNERS shall refer to the record owner of a single unit of any Townhome within the Subdivision

3. Paragraph 3.32 of the Declaration as Amended shall be deleted and modified to read as follows:
 - 3.32 PRIVATE SLIPS. Private Slips shall be used solely by the Property Owner on record or their tenants or guests.
 - (a) To qualify as a Slip Owner, the individual(s) or entity must be an Owner, Commercial Owner, or Unit Owner.
 - (b) Owners of marsh front lots shall not be allowed to apply for private pier or dock for the marsh front lot. The rights to such docks were conveyed by the Developer in order to permit the Docks and boat slips available to Owners, Commercial Owners, and Unit Owners.
 - (c) Private Slips may only be transferred to or purchased by an Owner, Commercial Owner, or Unit Owner.
 - (d) If the Slip Owner conveys their Parcel, Lot, Commercial Tract, or Townhome unit and does not own any other Parcel, Lot, Commercial Tract, or Townhome unit within the Subdivision, the Private Slip(s) shall convey with that Parcel, Lot.
 - (e) Slip Owners by accepting a Private Slip acknowledge that the Dock and Private Slips are located on the Cape Fear River which will have varying and changing depths and as such there has been no representation or guarantee as to the depth of any Private Slip.

4. Paragraph 5.4 of the Declaration as Amended shall be deleted and modified to read as follows:
 - 5.4 MAINTENANCE OF COMMON PROPERTY. Declarant shall maintain and keep in good repair Common Property until it is deeded to the Association, at which time the Association shall take title to said property. Thereafter, the Association shall maintain and keep in good repair the Common Property, except as provided below. This maintenance shall include, without limitation, all

maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping grass areas, paving, and other improvements.

- (a) The DOA shall take title and be exclusively responsible for the Docks, beginning at the point of the gate accessing the Docks, including the aluminum ramp and any fencing or security for the Docks.
- (b) The DOA may assume authority over repairs of the Boardwalk in the event it is damaged or becomes unsafe and the Association fails to make timely repairs. In such event, the DOA may have repairs completed and invoice the Association for payment.
- (c) The Developer shall secure hazard insurance for the Common Property. The Association and the DOA shall coordinate in ensuring the Common Property continues to be insured and adjusted for reasonable replacement value. The DOA shall pay the portion of the hazard insurance attributable to the Docks.

5. Paragraph 9.1 of the Declaration as Amended shall be deleted and modified to read as follows:

- 9.1 ENFORCEMENT. If an Owner, Commercial Owner, or Unit Owner or occupant of the Owner's property, Commercial Tract, or Unit Owner's unit, or any of their family, guest, employee(s), contractor(s), agent(s), tenant(s) or, invitee(s) violate any of the covenants as set forth in the Declaration as Amended, it shall be lawful for any other Owner or Unit Owner to prosecute any proceeding at law or in equity to prevent violator from so doing or to recover damages for violations or both. If an Owner, Commercial Owner, or Unit Owner or occupant of the Owner's property, Commercial Tract, or Unit Owner's unit, or any of their family, guest, employee(s), contractor(s), agent(s), tenant(s) or, invitee(s) violate any of the covenants as set forth in the Declaration as Amended, the Board of the Association, or the Board of The DOA if such violation is specific to the Docks, may levy reasonable fines against the Owner, Commercial Owner, or Unit Owner for each violation of the Restrictions.

6. Paragraph 11.4 of the Declaration as Amended shall be deleted and modified to read as follows:

- 11.4 ASSOCIATION MEMBERSHIP. Commercial Owner shall be a limited member of the Association having one vote in matters of the Association. However, Commercial Owner will not be required to pay assessments, have privileges of membership, or access or rights in the Common Areas, except and unless Commercial Owner is a member of the DOA. If Commercial Owner is a member of the DOA, Commercial Owner shall pay all Association assessments and have access to the gate and Common Areas to the extent necessary to access Private Boat Slip. Commercial Owner is entitled to notices of meetings of the Association and the right to attend.

7. ARTICLE TWELVE of the Declaration as Amended shall be deleted and modified to read as follows:

ARTICLE TWELVE
PRESERVATION POINT DOA

- 12.1 DOA ASSOCIATION. PRESERVATION POINT DOA, INC., a North Carolina nonprofit corporation, its successors and assigns ("DOA"), shall be the owner and

governing body of the Docks. The DOA shall be formed prior to the first Private Boat Slip being conveyed.

- 12.2 MEMBERSHIP. All Slip Owners shall become members of the DOA at the time of recording of transfer of the Private Boat Slips.
- 12.2 CONTROL BY DEVELOPER. Declarant shall have the absolute authority to control the DOA as long as it owns at least one Private Boat Slip. Declarant may relinquish control of the DOA earlier in Declarant's sole discretion. Members of the DOA, after control is relinquished, are entitled to one vote per Private Boat Slip owned. So long as Declarant owns at least one Private Boat Slip of the Docks, the Declarant shall have 96 votes. Declarant may establish by a separate document, rules governing the affairs of the DOA. Once the Declarant has relinquished control, the DOA, except as specifically set forth herein, the members of the DOA may amend those rules by a seventy-five percent (75%) approval by a quorum of members, or alternatively establish rules governing said DOA with a fifty-seventy-five percent (75%) approval by a quorum of members, if Declarant fails to establish those rules. As long as Declarant owns at least one boat slip on the Docks, Declarant may assign Declarant's rights at its discretion.
- 12.3 MEETING. A DOA meeting shall be called and convened each year at some time during the July or August of the calendar year after Declarant has relinquished control in writing to the DOA. Declarant, or an assigned representative, shall preside as temporary chairman at the first DOA meeting and shall serve as the Board of Directors until such time as the Declarant, relinquish control, in writing to the Board of Directors, voted on by its Members and appointed by the Developer, at a Special Meeting called by the Developer. Written notice of any meeting called shall be sent to all DOA members not less than thirty days or more than sixty days in advance of the meeting. At the meetings the presence of members either in person, by proxies or absentee ballots entitled to cast fifty percent (50%) of all votes shall constitute a quorum. No quorum shall be required at any Special Meeting called by the Developer before relinquishment of control.
- (a) The acts approved by a majority of those present at a meeting either in person or by proxies at which a quorum is present shall constitute the acts of the Members, except when approval by a greater number of members is required by the Declaration or By-Laws.
- (b) For so long as the Declarant, or one of their affiliates companies, owns at least one Lot within the Property, they shall hold one vote for each Private Boat Slip
- 12.4 ASSESSMENTS. The annual DOA assessment shall be **Two Thousand and no/100 Dollars (\$2,000.00)** per Private Boat Slip or Community Slip, per year for Slip Owners/ Association.
- (a) This amount may be reviewed by the DOA on an annual basis and may be increased, or decreased, as necessary to meet the needs as described herein. Any increase up to ten percent annually may be made by a seventy-five percent of the Board during the first five years after the Declarant has relinquished control of the DOA. Any increase more than ten percent (10%) in a given year, must be approved by a vote of seventy-five percent of Private Boat Slip Owners. Subsequent to the five year period, future increases may only be approved by a vote of seventy-five percent of Slip Owners.

- (b) The Slip Owners, by acceptance of deed, therefore, hereby covenants, whether or not it shall be so expressed in such deed, and is deemed to covenant and agree to pay the DOA's annual assessments and special assessments subject to the terms of this paragraph.
- (c) Declarant and later the DOA shall keep the Assessment funds in an escrow account and keep an accurate accounting of how this money was used. Any funds in this escrow account, upon Declarant relinquishing this responsibility to the DOA, shall be turned over to the DOA.
- (d) Annual assessments are due the 1st day of January of each new calendar year.
- (e) No Private Boat Slip(s) within the Preservation Point Docks that are owned by the Declarant, or one of their affiliate companies, shall be assessed the yearly dues until said Private Boat Slip(s) have been transferred by the Declarant.
- (f) In addition to other assessments, the Association shall pay ten percent (10%) of the total annual assessments invoiced by the Association to its Members each year.

12.5 ASSESSMENT PURPOSE. Annual assessments shall be used for insurance premiums, taxes, utility fees and improvements, maintenance, cleaning and caring of the Docks regardless of whether the Declarant or the DOA owns the Docks, or other purposes the Declarant or Association desires to use said assessments for that exclusively promote the recreation, health, safety and welfare of the members of the DOA; provided, however, the maintenance of Docks and the payment of the insurance described above shall be given absolute priority over any other use of the Assessments that may be determined by the DOA at a later date.

12.6 SPECIAL ASSESSMENTS. Special assessments may be made for any lawful purpose by the approval of seventy-five percent of the DOA membership at the meeting once a quorum is established. The Association shall be invoiced for 10% of the cost of amount budgeted to necessitate a special assessment.

12.7 DELINQUENT ASSESSMENTS AND PENALTIES.

- (a) If the annual or special assessments, assessments for maintenance of Docks or penalties for duly assessed for violation of rules set by the DOA, are not paid within thirty days after the date when due, then such assessment shall become delinquent and shall, together with interest of fifteen percent per annum, or the maximum allowed by law, constitute a lien against the Slip Owner's corresponding parcel, lot or unit in the Subdivision. The DOA may bring an action of law against the Owner personally obligated to pay the same, or to foreclose the lien against the Owner's parcel or lot or the Unit Owner's unit, in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment interest provided herein together with the costs of the action collection of the assessment, including a reasonable attorney's fee and costs and fees on appeal. Reasonable attorney's fees and costs of collection shall be recoverable whether or not suit is brought. In addition, if the annual assessment is not paid within thirty days after the date when due, the Slip Owner shall be suspended from use of the Docks until such time as assessments are paid in full.
- (b) The lien of the assessments provided for herein shall be subordinate to the lien of any

first mortgage. Sale or transfer of any parcel, lot or unit shall not affect the assessment lien; however, the sale or transfer of any parcel, lot or unit is pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Private Boat Slip Owner from liability for any assessment thereafter becoming due or from the lien thereof.

- (c) If the last parcel, lot or unit of the Slip Owner is foreclosed upon without the Private Boat Slip listed as collateral, or if the Owner or Unit owner does not own a parcel, lot or unit within the Subdivision, the Private Boat Slip shall revert back to the DOA.
- (d) The DOA shall upon demand at any time furnish to any Slip Owner liable for said assessment a certificate in writing and in recordable form, signed by an officer of the DOA, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

12.8 INSURANCE.

- (a) DOA and Association will work cooperatively to secure insurance. The Association is responsible for covering the DOA and the Docks under its liability insurance policy as provided herein. The Declarant has secured a hazard insurance policy to cover the reasonable replacement cost of the docks, currently at Two Million Eight Hundred and Seventy-Five Thousand and no/100 Dollars (\$2,875,000.00). The DOA bears the responsibility of maintain premiums on the hazard insurance policy and adjusting coverage accordingly.
- (b) Insurance coverage obtained shall list the DOA as the loss payee for the any damage to the Docks, as trustee, for the respective benefitted parties, as further identified in subparagraph (ii) below. Such insurance shall be governed by the provisions hereinafter set forth:
 - (i) All policies shall be written with a company licensed to do business in North Carolina;
 - (ii) Exclusive authority to adjust losses under policies obtained by the DOA shall be vested in the Board; provided, however, no valid lien holder having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto;
 - (iii) In no event shall the insurance coverage obtained and maintained by the DOA hereunder be brought into contribution with insurance purchased by individual Private Boat Slip Owners, occupants, or their lien holders, and the insurance carried by the DOA shall be primary;
 - (iv) All casualty insurance shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with dock construction in the county where the property is located;
 - (v) The Board shall be required to make every reasonable effort to secure insurance policies that provide for the following:
 - (1) a waiver of subrogation by the insurer as to any claims against the DOA, the DOA's manager, the Owners and their respective tenants, servants, agents, and guests;

- (2) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
- (3) a provision that no policy may be canceled by the Association without the written authorization of the DOA and that no policy may be canceled, invalidated, suspended or subjected to non-renewal on account of any one or more individual Slip Owners;
- (4) a provision that no policy may be canceled, invalidated, suspended, or subjected to non-renewal on account of any defect or the conduct of any director, officer, or employee of the Association or DOA or its duly authorized manager without prior demand in writing delivered to the Association and the DOA to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the DOA, its manager, any Owner or Mortgagee;
- (5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (6) that no policy may be canceled or substantially modified or subjected to non-renewal without at least thirty days prior written notice to the Association and the DOA.

(c) Each Slip Owner covenants and agrees that in the event of damage and destruction of structures on their Private Boat Slip(s), Slip Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made. The Slip Owners shall pay a pro rata share of all costs of repair or reconstruction which are not covered by insurance proceeds, excepting the Association shall pay ten percent (10%) of the total costs of repair and reconstruction. In the event that the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, insurance proceeds shall be used to clear the area of debris and put the Common Property back in its natural state. Any remaining proceeds from insurance and monies in escrow held by the DOA shall be divided in equal shares per Private Boat Slip and each Slip Owner shall receive a share for each Private Boat Slip owned.

12.9 REPAIR AND RECONSTRUCTION. In the event of damage to or destruction of all or any part of the Dock as a result of fire or other casualty, unless at least seventy five percent (75%) of the Slip Owners vote not to proceed with the reconstruction and repair of the structure, the DOA or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the damaged structures.

- (a) Cost Estimates. Immediately after a fire or other casualty causing damage to the Dock, the DOA shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the DOA determines to be necessary.
- (b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the DOA, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special

assessment shall be made against all of the Slip Owners, without the necessity of a vote of the members. If after repair and reconstruction is completed, there is a surplus of funds, such funds shall be common funds of the Property to be used as directed by the Board.

- (c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the structures were originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the DOA.
- (d) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the DOA from assessments against Slip Owners, if any, on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph to be disbursed by the DOA in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the DOA.
- (e) Declarant's Option to Participate. In the event of damage or destruction of all or part of the Dock as a result of fire or other casualty, the Declarant may elect to not participate in the repair or reconstruction. If the Declarant elects not to participate in the repair or reconstruction, the Dock can be repaired or reconstructed for the total number of slips less the number of slips owned by the Declarant.

- 12.10 ADOPTION OF RULES. The Board may adopt such procedural and substantive rules for the Docks, not in conflict with this Declaration or applicable state law, as it may deem necessary or proper for the performance of its duties. The rules may provide requirements and standards with respect to any and all matters with which the DOA is charged in this Declaration, including, but not limited to, the safety, maintenance, upkeep, and security of the Docks. Notice of any rules adopted by the DOA shall become effective thirty days after written notice is given to all Members.
- 12.11 SALE OF PRIVATE BOAT SLIPS. Within thirty days after transferring of a Private Boat Slip, the purchaser of the Private Boat Slip shall give the DOA written notice of their Ownership of the Private Boat Slip(s). Upon failure of a Slip Owner to give the required notice within the thirty-day time period provided herein, the DOA may levy fines against the Slip Owner thereof, and assess the Slip Owner for all costs incurred by the DOA in determining their identity.
- 12.12 SECURITY. The Declarant or DOA may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Slip Owner, for himself or herself and his or her tenants, guests, and licensees, acknowledges and agrees that the DOA is not a provider of security and shall have no duty to provide security on the Docks. It shall be the responsibility of each Slip Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Slip Owner. Neither the Declarant nor DOA shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.
- 12.13 DECLARANT'S RIGHT TO ASSESSMENTS. So long as Declarant owns and/or maintains

the Docks, Declarant shall have the right to the proceeds collected by the DOA from any and all Assessments to pay for the maintenance, taxes and insurance of the Docks. In the event the DOA fails to reimburse or pay, on demand, the Declarant the amounts necessary as set forth above, the Declarant shall have the right, by written notice to each Slip Owner, to instruct that all further Assessments be paid to Declarant in lieu of the DOA, and to enforce non-payment of Assessments by Slip Owners in such an event in the manner set forth above.

12.14 ENFORCEMENT BY DOA. If the owners of any Private Slip, Lots or Townhouses within the Subdivision, or their family, guest, employees, contractors agents, tenants, or invitees violate any of the covenants set forth in this Article XII or any of the Rules appropriately adopted and noticed by the DOA, the DOA may levy reasonable fines against the Slip Owner, Owner or Unit Owner for each violation of the Restrictions and suspend access to Dock by the Owner, their family, guest, employees, contractors agents, tenants, or invitees until such fine is paid and may enforce such fines as provided in this Declaration.

This agreement contains the entire agreement between the parties hereto with respect to amendment of the restrictive covenants referenced herein.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

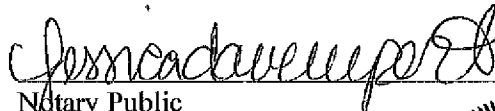
DECLARANT:
PRESERVATION POINT PARTNERS, LLC,
A Tennessee Limited Liability Company

By: 
Scott Rye, Managing Member

STATE OF TENNESSEE

COUNTY OF KNOX

The undersigned, a Notary Public for said County and State, does hereby certify that SCOTT RYE, personally appeared before me this day and acknowledged execution of the foregoing instrument on behalf of the limited liability company, as Managing Member under his duly granted authority. Witness my hand and official stamp or seal on March 13, 2024.


Notary Public

My Commission Expires: 02/28/27

