

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

**MASTER DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS FOR  
OSPREY POINT TOWNHOMES, PHASE III (the "Declaration")**

Prepared by: Gaylor Edwards & Vatcher, P.A.  
219 New Bridge Street  
Jacksonville, NC 28540

THIS DECLARATION is made this 28<sup>th</sup> day of August, 2023, by CAPITAL ASSET OSPREY DEVELOPMENT, LLC, a North Carolina limited liability company, the "Declarant".

**BACKGROUND STATEMENT**

**WHEREAS**, Declarant is the owner of a certain tract of land situated in Topsail Township, Pender County, North Carolina, being more particularly described on Exhibit "A," attached hereto and incorporated herein by reference, hereinafter the "Project Area";

**WHEREAS**, Declarant is, or will be, constructing on a portion of the Project Area, three quadriplex residential structures, which will include community facilities for the benefit of the community, with four (4) single family townhouses per quadriplex;

**WHEREAS**, Declarant desires to provide for the preservation and enhancement of the property values and amenities within said community and to provide for the maintenance of common areas, properties and improvements located thereon, and to this end desires to subject the Project Area to the covenants, restrictions, easements, charges and liens as are hereinafter set forth, each and all of which are for the benefit of said real property and each present and future owner thereof;

**WHEREAS**, Declarant desires to provide and allow for the annexation of additional "sections" to the Project Area as said "sections" are developed and completed, and to provide for equality of rights, privileges and obligations of all lot owners in all "sections" of the Project by adding and annexing such "sections" to the Project by recordation of "Supplemental Declarations" to this Declaration.

**DECLARATION**

**NOW, THEREFORE**, it is hereby declared by Declarant and Lienholder that the Project Area described herein is, and shall be, held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth; said Project Area being more particularly described as

Submitted electronically by "Gaylor Edwards Vatcher LawFirm"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Pender County Register of Deeds.

follows:

BEING all of that property as shown on a plat entitled, "Exempt Plat of Osprey Point for Capital Asset Osprey Development," dated June 08, 2023, prepared by Charles F. Riggs & Associates, Inc. and recorded in Map Book 72, Page 135, in the Office of the Register of Deeds of Pender County, North Carolina, hereinafter referred to as either the "Project Area", "OSPREY POINT TOWNHOMES, PHASE III," or the "Subdivision".

**SECTION 1. DEFINITIONS:**

A. Association shall mean and refer to "OSPREY POINT TOWNHOMES HOA, INC.," a North Carolina non-profit corporation, its successors or assigns.

B. Board shall mean and refer to the Board of Directors of the Association.

C. Left Intentionally Blank.

D. Common Area shall mean all real property owned by the Association, if any, for the common use, benefit and enjoyment of the Owners and designated as "Common Area," including Sapphire Avenue, any Gravel Drives, "Proposed Engineered Stormwater," "Proposed Pool," and those areas of land shown on any recorded subdivision map of any portion of the Project Area not situated within the boundary of any Lot.

The Common Area to be conveyed to the Association prior to the conveyance of the first Lot will be the "Common Area," and all areas of land not situated within the boundary of any Lot, as shown on the Subdivision Map.

E. Common Expenses shall mean and refer to :

i. the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Articles of Incorporation of the Association and its By-Laws;

ii. all amounts expended by the Association for the maintenance, protection, operation, administration, management, repair, replacement, improvement, payment of all taxes imposed, and insuring, the improvements situated in and on the Common Area, including, but not limited to the Proposed Pool, Proposed Engineered Stormwater, Sapphire Avenue, any other streets, drives and landscaped areas;

F. Declaration shall mean the covenants, restrictions and easements and all other provisions set forth in this entire document, as may from time to time be modified or amended.

G. Declarant shall mean and refer to CAPITAL ASSET OSPREY DEVELOPMENT, LLC, a North Carolina limited liability company, or any successor in title or any successor in interest of CAPITAL ASSET OSPREY DEVELOPMENT, LLC.

H. Project Area shall include that property described on Exhibit "A," all or part of which may from time to time be submitted to and made subject to the terms of this Declaration.

I. Development Rights means the rights of Declarant, independently or in combination with others, to: (i) add real estate to the Property; (ii) create lots, common area or limited common area within the Property; (iii) subdivide or combine lots or convert lots into common area, (iv) re-allocate the permissible built-upon area of any Lot or Lots; or (v) withdraw real estate from the Property.

J. Living Unit shall mean and refer to any portion of a structure situated upon the Properties designed and intended for use and occupancy as a residence by a single family, including, without limitation, townhouse homes, duplexes, triplexes, quadriplexes, single family homes, patio homes and condominium units.

K. Lot or Unit shall mean any separately described parcel of land or condominium unit, as defined in NCGS Section 47C-1-103, shown upon any recorded subdivision map of the Properties, with the exception of Common Area, Pool, Sapphire Avenue, Proposed Engineered Stormwater, private streets, private drives, and easements.

L. Owner shall mean and refer to the record owner, whether one or more persons or

entities, of a fee simple title to any Lot which is a part of the Properties, but shall not include those having such interest solely as security for the performance of an obligation.

**M. Parcel** shall mean and refer to a portion or part of the real property, together with the improvements located thereon, which becomes subject to this Declaration. This term shall include any additions to the existing Properties as herein provided.

**N. Project Property or Area** shall mean the total of the real property incorporated herein and described in the Preamble, together with all structures and other improvements thereon, together with such other real property as may from time to time be added to and annexed in the Project Area by Supplemental Declaration.

**O. Property or Properties** shall mean and refer to any of the real property which is, or may be, subject to this Declaration or Supplemental Declaration(s).

**P. Section** shall mean and refer to any separately described portion of the Subdivision identified by a capital letter of the alphabet and shown on a recorded map as a section thereof. The first section of the Subdivision is designated Osprey Point Townhomes, Phase III.

**Q. Special Declarant Rights** means the rights of Declarant, its successors and assigns, to: (i) complete improvements indicated on recorded plats and any plans for the Property; (ii) exercise any development right; (iii) maintain sales offices, management offices, signs advertising the Property, and models; (iv) use easements through common areas for the purpose of making improvements within the Property, or within real estate which may be added to the Property; (v) make the Property part of a larger planned community or group of planned communities; (vi) make the Property subject to a master association; or (vii) appoint or remove any officer or executive board member or director of the Association or any master association during any period of Declarant control.

**R. Supplemental Declaration** shall mean and refer to any declaration of covenants, restrictions, easements, charges and liens, or amendment to any declaration, recorded by the Declarant, or its successors and assigns, which applies to a specific Parcel within the Properties.

## **SECTION 2. ANNEXATION OF PROPERTIES TO THE PROJECT AREA:**

The Declarant, for itself and its successors and assigns, hereby expressly reserves the right, but shall in no way be obligated, to expand the real property which is subject to this Declaration without the consent or joinder of any Owner or Owners of any Lot or Lots or person or entities having a lien or security interest in such Lot or Lots, by annexing, from time to time all or any tract or parcel adjoining the Project Area. The Declarant may also identify and annex to the Project Area by amendment hereto any other property as Declarant, in its sole discretion, may determine.

An amendment to this Declaration shall be made and recorded in the Office of the Register of Deeds of Pender County, North Carolina, to include each portion of the real property which is to be subject to this Declaration, and each such portion of the real property shall constitute an addition to the Properties. The right of the Declarant, or its successors and assigns, to expand the Properties as herein provided shall expire twenty (20) years following the date of recordation of this Declaration.

## **SECTION 3. SUPPLEMENTAL DECLARATION(S):**

The Declarant shall have the right, from time to time, to record Supplemental Declarations for a Parcel or Parcels annexed to the Project Area which may designate specific use and other restrictions within said Parcel, may amend, modify and/or revise specific restrictions in this Declaration to be applicable only to such Parcel or Parcels, may create Common Areas within such Parcel for the use only of Owners of Lots in said Parcel, provided, however, no Supplemental Declaration shall avoid membership in the Association by Owners of Lots in said Parcel, nor shall any Supplemental Declaration modify or amend the terms of this Declaration or any prior Supplemental Declaration for another Parcel, without the required consent of Owners of all Parcels constituting the then existing Project.

**SECTION 4. COMMON AREAS AND EASEMENTS:**

A. **Dedication:** The Common Areas, Pool and related improvements, Sapphire Avenue, Private Streets and Private Drives, Proposed Engineered Stormwater in each Parcel shall be dedicated as such by the Declarant, or its successors and assigns, before the first Lot or Unit is conveyed to an Owner.

B. **Maintenance:** The Association shall be responsible for the exclusive management and control of the Common Areas, and all improvements located thereon (including recreational facilities, swimming pool, stormwater area and devices, landscaping, sanitary sewer facilities, fixtures and equipment related thereto), except as may otherwise be provided for in a Supplemental Declaration. This paragraph specifically empowers, but does not limit other powers of, the Association to control and regulate the hours and periods of operation of all recreational facilities, including, but not limited to the swimming pool, in the Common Area, and all maintenance, repair, and replacement of the stormwater area and devices, and all maintenance of landscaping in the Common Area, even if the areas are subject to a sub-association created by this Declaration, or any amendment to this Declaration and recording of a Supplemental Declaration.; to enforce each Lot owner's obligations with respect to all applicable North Carolina Sedimentation and Erosion Control Permits; said authority to be exercised, if and only if, and when and only when, Declarant transfers the Permit to the Association.

C. **Owners' Easements of Enjoyment:** Every Owner shall have a right and easement of enjoyment in and to the Common Area, together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over Sapphire Avenue ("25' Private Easement"), the drives, walkways and parking areas of the Common Area, including, but not limited to, the Swimming Pool, Sapphire Avenue ("Proposed 26' Private Easement") and the Stormwater area and devices, all of which shall be appurtenant to and shall pass with the title to every Lot or Unit, subject to the following provisions:

(i) the right of the Association to suspend the voting rights and the right to use the recreational or other Common Area facilities, including, but not limited to the swimming pool and related improvements, by any Owner for a period during which any assessment against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days (unless otherwise provided by a court of competent jurisdiction) for any infraction of its published rules and regulations;

(ii) the right of the Association to dedicate, sell, lease or transfer all or any part of the Common Area, or any interest therein, to any public agency, authority, or utility, or to any other person for such purpose and subject to such conditions as may be agreed upon by the Members. No such dedication, sale or transfer shall be effective, unless it has been approved by two-thirds (2/3) of each class of Members and an instrument of dedication, sale, lease, or transfer property executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class of the Members have approved the dedication, sale, lease or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes, sanitary sewer, storm sewer, road rights of way and other conveyances for dedication to the public, as specified herein, may be made by the Association without consent of the Members;

(iii) the right of the Association to limit the number of guest of Members;

(iv) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage the Common Area, and the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Members hereunder;

(v) the right of the Association, in accordance with its Articles of Incorporation or Bylaws, to impose rules and regulations for the use and enjoyment of the Common Area and improvements thereon, including, but not limited to the swimming pool, which rules and regulations may further restrict the use of the Common Area and create and restrict the use of Limited Common Area, if any.

(vi) the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and access, as specified above, to the

Property and all subsequent Parcels annexed to the Project Area.

#### SECTION 5. MEMBERSHIP AND VOTING RIGHTS:

A. **Members.** Every record Owner of a Lot or Unit shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot, which is subject to assessment.

B. **Classes of Members.** The Association shall have two classes of voting membership:

**Class A.** Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot or Unit owned. When more than one person holds an interest in any Lot, all such persons shall be Members, however, the vote for such Lot shall be exercised as they have among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

**Class B.** The Class B Member shall be the Declarant and shall be entitled to six (6) votes for each Lot or Unit owned, including lots later added pursuant to annexation of additional Property as set forth in this Declaration. The Class B membership shall cease and be converted to Class A membership with one vote for each Lot on the happening of either the following events, whichever occurs earlier:

(i) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership;

(ii) on that date which is ten (10) years from the date of recording this Declaration;

(iii) at the discretion of the Declarant.

C. **Suspension of Voting Rights.** The right of any Member to vote may be suspended by the Board of Directors of the Association for just cause pursuant to its rules and regulations, the Articles and Bylaws of the Association.

D. **Declarant Control.** The Declarant shall have the right to appoint the Board of Directors of the Association until Declarant transfers control of the Association to the Class A Members in accordance with Section 6.N., below.

#### SECTION 6. COVENANT FOR ASSESSMENTS/ LOT OR UNIT OWNERS:

A. **Purpose of Assessments:** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and comply with all obligations imposed by the Sedimentation Control Permit, the Engineered Stormwater Plan; and, in particular, but not limited to, capital improvements and maintenance of the Common Area, and for the use and enjoyment of the Common Area, including but not limited to, the cost of maintenance, repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Area, the providing for security to the Property, the procurement and maintenance of insurance in accordance with this Declaration, or the Bylaws or as deemed appropriate by the Board, the employment of counsel, accountants, and other professionals for the Association when necessary, and such other needs as may arise. Further, said assessments shall be for payment of all amounts expended by the Association in holding and being responsible for the obligations of the Sedimentation Control Permit and compliance with the Engineered Stormwater Plan; all amounts expended by the Association in enforcing the provisions of this Declaration, as may be amended, and all amounts expended by the Association in legal, engineering or architectural fees and all similar fees which may be incurred by the Association from time to time in performing the functions delegated to the Association by this Declaration.

B. **Creation of the Lien and Personal Obligation of Assessments:** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot, other than the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments or charges;
- (2) special assessments for extraordinary maintenance and capital improvements;
- (3) special assessments for purchase, construction or reconstruction of improvements; and
- (4) to the appropriate governmental taxing authority, a pro rata share of ad valorem taxes against, and assessments for private improvement to, the Common Area, Pool, Sapphire Avenue and private parking and drives, if the Association shall default in payment thereof.

The annual and special assessments, together with interest and costs, and reasonable attorney's fees for collections, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**C. Minimum Annual Assessment:**

The initial annual assessment for the Common Area, shall be **Six Hundred and 00/100 Dollars (\$600.00)** per Lot. Until such time as there is no longer a Class B Membership, Declarant shall not be obligated to pay any assessment, but shall pay any Association expenses not otherwise covered by the annual assessments, or any special assessments hereunder.

**D. Increase of Annual Assessment:** From and after January 1, 2023, the annual assessments for the Common Area,, effective for any year (including 2023) may be increased from the preceding year by the Board of Directors, without a vote of the membership, in the sole discretion of the Declarant for so long as there is a Class B Membership, and by the percentage which may not exceed twenty percent (20%) when there is no longer a Class B Membership. From and after there is no longer a Class B Membership, the annual assessments for the Common Area and Limited Common Area, if any, may be increased by a percentage greater than that permitted to be made by the Board of Directors under this section by an affirmative vote of two-thirds (2/3) of the Class A Members who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increased assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

**E. Criteria for Establishing Annual Assessment:** In establishing the annual assessments for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of twenty (20%) percent of the previous year's assessment, without the consent of the Members as required under this Section, unless the determination of such costs and/or expense is otherwise required by law, or beyond the control of the Association.

**F. Special Assessments for Capital Improvements and Insurance:** In addition to the annual assessments authorized above, for so long as there is a Class B Membership, the Declarant or the Association may levy, in any assessment year, a special assessment applicable to that year only for the construction, reconstruction, restoration, repair or replacement of any capital improvement, existing or proposed, in the Common Area, any extraordinary maintenance, including fixtures and personal property related thereto, without the consent of any Class A Member; once there is no longer a Class B Membership, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Area, Limited Common Area, if any, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, and any insurance premium, provided that any such assessments shall have the assent of two-thirds (2/3) of the votes of the Class A Members who are voting in person or by proxy at a meeting duly called for this purpose.

**G. Replacement Reserve:** The Board of Directors of the Association shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Area, including, but not limited to the Pool, Sapphire Avenue and private drives, and which the Association may be obligated to maintain.

**H. Notice and Quorum for Any Action Authorized Under Sub-Sections D and F:**

Written notice of any meeting called for the purpose of taking any action authorized under this Section shall be sent to all Members not less than 15 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast ten percent (10%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called pursuant to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**I. Uniform Rate of Assessment and Separate Accounts:** Both annual and special assessments for Common Area, including, but not limited to the Pool, must be fixed at a uniform rate for all Lots subject to such assessments and may be collected on a monthly basis or other periodic basis establish by the Board. The Board may establish separate bank accounts for the Common Area assessments and the assessments for each Section of the Subdivision. In the event separate bank accounts are not established, the Board shall maintain a separate set of books and accounts for the assessments collected and disbursements made for the Common Area and each Section.

**J. Date of Commencement of Annual Assessments; Dues Date; Initial Working Capital:**

The annual assessments provided for herein shall commence as to all Lots subject thereto, except such Lots owned by the Declarant, on the date of closing the transfer and conveyance of such Lot to the Owner. The first annual common area assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual common area assessments against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual common area assessments shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates. The Association shall, upon demand, and for reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

In addition to the regular assessments to be charged and paid hereunder, each Lot Owner shall, at the time of the initial sale of each Lot by Declarant to that Lot Owner, pay to the Association a sum equal to two (2) months of the annual common area assessment on that Lot as additional working capital of the Association. These amounts need not be segregated, but may be commingled with regular assessment funds. This working capital amount shall be paid by the Lot Owner, notwithstanding the fact that Declarant may have paid Association expenses to the Association on the Lot being sold.

**K. Effects of Nonpayment of Assessments; Remedies of the Association:** Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed eighteen (18%) per annum, in addition to a late payment penalty, not to exceed fifty and no/100 dollars (\$50.00). The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, cost, late payments charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court in the County in which the Property is located in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time following thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claim of lien shall include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. An officer or agent of the Association shall sign such claim of lien. Upon full payment of all sums secured by such claim of lien, the



same shall be satisfied of record.

**L. Subordination of the Lien to Mortgages and Ad Valorem Taxes:** The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment, which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability from any assessments thereafter becoming due or from the lien thereof.

**M. Responsibility for Maintenance of Swimming Pool, Private Streets and Driveways:**  
The maintenance responsibility of the swimming pool, and related improvements, the Stormwater area and devices, Sapphire Avenue, private streets, private parking and driveways as shown on any recorded subdivision map of the Properties shall rest with the Association. In no case shall any governmental authority have jurisdiction over the Property, be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property and/or occupant when the failure is due to inadequate design or construction, failure to adequately maintain or repair, blocking of access routes, or any other factor within the control of the Declarant, the Association or Owner.

**N. Transfer of Control of Association:** At such time as Declarant shall elect, the control of the Association shall be transferred to the Class A Members. The Declarant has the authority to designate any Class A Member as the President of the Association to serve in that capacity for a period of one (1) year. Prior to the expiration of the one (1) year, a meeting shall be held of Class A Members in accordance with the Bylaws of the Association to elect directors and officers of the Association. The person selected as President by the Declarant shall also accept appointment as the Registered Agent of the Association. The Declarant may also hire a property management company, on behalf of the Association, to assume responsibility for collection of dues and assessments.

## **SECTION 7. ARCHITECTURAL CONTROL:**

**A. Approval of Plans and Specifications.** Except for the original and initial construction, and subsequent modification of improvements by the Declarant on any Lot, which construction is and shall be exempt from the provisions of this Section, no site preparations (including, but not limited to grading, elevation work, landscaping, sloping or tree work) or construction, erection, installation or modification of any improvements, including but not limited to, buildings, roofs, shingles, fences, signs, walls, bulkheads, screens, landscaping, exterior painting, siding, yard furniture, play areas, and play equipment or other equipment, furniture or structures shall be commenced, erected, placed, altered or maintained upon any Lot, nor shall any addition to, or change or alteration therein be made by any Owner, other than Declarant, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, type of siding, type of shingles, location and elevations of the proposed improvements or landscaping or yard equipment or furniture shall have been submitted to, and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography, by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more persons appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such submission within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with; provided that plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved, notwithstanding the foregoing. Refusal of approval of such plans, location or specifications may be based upon any ground, including purely aesthetic or environmental, that in the sole discretion of the Board or Committee, it shall deem sufficient. The Association shall not be responsible for any defects in the plans and specifications submitted to it or in any structure erected according to such plans and specifications. Upon request, the Board shall provide any Owner with a letter stating that any such work plans and specifications have been approved and third parties may rely upon same.



**B. Inspections.** The Association, through the Board, the Committee or their appointed agents, shall have the right, at its election, but shall not be required, to enter upon any Lot during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

**C. Variances and Adjustments.** The Board or the Architectural Committee appointed by the Board, as the case may be, shall have power to, and may allow variances of, and adjustments of, the restrictions on use and building restrictions established herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the restrictions contained herein; provided, however, that variances or adjustments are done in conformity with the intent and purposes hereof; and, provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to the Property or other Lots in the immediate neighborhood. Variance and adjustments may be of the height, size, and setback requirements, but shall not be limited thereto. In the event of the grant of any variance in the building or use restrictions, the Association shall execute a document attesting to such grant and the specific nature thereof in form suitable for recording, so that the Lot Owner may record same in the Registry of the County in which the Lot is located. Such document shall be prepared at the cost of the Lot Owner and shall be binding upon the Association and may be relied upon by third parties.

**D. References to Association.** Any reference to "Association" in this Section or that on Use Restrictions or Building Restrictions shall mean the Board or the Architectural Committee, whichever shall be vested with approval authority by the Board.

## **SECTION 8. GENERAL RESTRICTIONS:**

**A. Land Use and Building Type:** No Lot, Lots, or portions thereof shall be put to any use other than for residential purposes. No building or other structure shall be erected, altered, placed or permitted to remain on any Lot described and shown on a recorded Subdivision map of the Property, other than one single family townhouse dwelling, not to exceed two and one-half stories in height, unless otherwise first approved by Declarant, in writing. Any structure erected, placed or altered on any Lot shall be subject to the provisions of Section 7 of this Declaration relating to architectural control. This covenant shall not be construed as prohibiting the use of a new dwelling as a model home for sales purposes.

**B. Prohibited Structure:** No structure of a temporary character, such as a trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporary or permanently. No trailer, mobile home, camper or like vehicle, or any other structure which is finished or partially finished at a manufacturing unit or plant and transported for quick assembly or which is designed to be disassembled and relocated shall be used as a residence at anytime. It is specifically the intention and purpose of this covenant to prohibit the location of mobile homes, trailers, modular houses, relocatable houses, or similar type structures on the Property for use as a residence. This covenant shall not be construed as prohibiting the use of such a structure as a sales/rental model or office or construction site facility.

**C. Nuisances:** No noxious, offensive, or illegal activity shall be carried on or conducted upon any Lot or other portion of the Subdivision, nor shall anything be done on any Lot or other portion of the Subdivision that shall be or become an unreasonable annoyance or nuisance to the neighborhood. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted to remain on a Lot.

Declarant, or Association, its successors or assigns, reserves the right to enter upon and cut grass, weeds, or undergrowth on any Lot, Common Area, or easement, but shall be under no obligation to do so. Declarant, or Association, its successors or assigns, further reserve the right to impose such other rules and regulations to prohibit "group" or "party" car washes and other activities which it deems an unreasonable annoyance or nuisance to the community.

**D. Animals:** No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot

or in any dwelling, except that dogs, cats or other common household pets may be kept, or maintained, provided that, said pet shall not be kept or maintained for breeding or commercial purposes and are at all times not a nuisance or physical threat to other Owners, adequately restrained by a leash or confined in an approved area. No animal shall be leashed or confined in the front or side yard of any Lot. No other animals shall be allowed without the Declarant's prior written consent. Any such household pet shall not be allowed off the Lot of the Owner of said pet, unless said pet is attended and on a leash. Each Owner shall be solely and absolutely liable for the acts of any pet kept on such Owner's Lot. Notwithstanding the foregoing, Declarant, or the Association, may, at their option, limit the size or breed of any animal permitted on any Lot, and may prohibit a specific animal due to its nature, tendencies, or with a record of vicious behavior.

**E. Garbage and Refuse Disposal:** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be burned or disposed of on any Lot, and shall be kept in sanitary containers approved by the Architectural Committee. All equipment for the storage prior to disposal of such material shall be kept in a clean and sanitary condition. The placement of containers shall be approved by the Architectural Committee and, in any event, shall be kept in an enclosed area not subject to view from outside of the enclosed area.

**F. Exterior Lights:** All light bulbs or other lights installed in any fixture located on the exterior of any dwelling, building or other structure located on any Lot shall be clear or white lights or bulbs. No mercury vapor or similar wide area lighting similar to street lights shall be allowed without prior Architectural Committee approval.

**G. Left Intentionally Blank.**

**H. Left Intentionally Blank.**

**I. Signs:** No sign, billboard, or other advertising of any kind, including without limitation professionally prepared "for sale" and "for rent" signs, shall be placed or erected on any Lot, save and except a professionally prepared "for sale" or "for rent" sign not to exceed six (6) square feet in size. Although approval by the Architectural Committee is not required prior to the display of such signs, the Architectural Committee may itself remove, have removed, or require the removal of any such sign which in its opinion adversely affects the appearance of the community. A valid easement shall exist on any Lot for such removal by the Architectural Committee or its agents. Provided, however, nothing shall prohibit or limit in any manner "construction" signs designating the job site and builder which may be placed upon a Lot during the period of the construction of a residential dwelling on the Lot, but must be immediately removed upon final completion of such construction. Notwithstanding the above, any additions to the Project Area in the Project Area may be further limited in regard to signs, billboards or advertising as set out in any Supplemental Declaration. Nothing herein shall prohibit any sign erected by the Declarant or its assigns.

**J. Exterior Antennas:** There shall be no exterior antennas of any kind for receiving and/or sending of television, radio, internet or other signals, unless same have first been approved by the Declarant, Association, or Architectural Committee.

**K. Left Intentionally Blank.**

**L. Vehicles, Boats, Storage, Travel Trailers, etc:** Inoperative, non-licensed and/or non-registered motor vehicles, vehicles over 5000 pounds empty weight, or buses shall not be parked overnight on the Properties. No automobile, other vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands. Motor vehicles, whether owned by the Lot Owner or not, parked in violation of any provision in this Declaration, or in violation of any Rules or Regulations adopted by the Association, shall be towed away and stored at the Owner's risk and expense. By parking on the Properties, the owner of the vehicle or other vehicle user is deemed to waive any claim against the Declarant or Association resulting directly or indirectly out of the towing and/or storage, unless the towing can be shown, by a preponderance of the evidence, to have been done maliciously. The Association is not obliged to try to determine the owner of a vehicle and first give notice, before authorizing the towing of the vehicle parked in violation hereof.

**M. Window Appearance:** All draperies or other window dressings hung at windows, or in any manner so as to be visible from the outside of any building erected upon any Lot shall be white or off white or in

lieu thereof shall have a white lining.

**N. Clotheslines:** Clotheslines shall not be permitted, unless otherwise approved by the Declarant, Association, or Architectural Control Committee.

**O. Fence Minimum Requirements:** Any portion of any fence which can be viewed from the Common Area shall be of an ornamental nature. The term fence shall include but not be limited to, a wall, fence, landscaping, berm, or hedge which act as a fence or privacy or security inducing structure. Architectural review requirements must be met prior to construction of any fence.

## **SECTION 9. MULTI-FAMILY DWELLING SPECIAL PROVISIONS:**

**A. Conveyance of Multi-Family Unit and Encroachment Easements:** Regardless of any provision in this Declaration to the contrary, nothing shall prohibit or prevent the conveyance of a part or portion of any Lot in order to convey one separate living quarters residence of a multi-family dwelling. Easements, one (1) foot in width, are hereby reserved, for the benefit of the Declarant, its successors, and assigns and the Owner of any Lot, upon any adjacent Lot or Common Area for the encroachment of the townhouse structure, including, but not limited to, all or any portion of the common Party Wall of such Lot, or any portion of the roof overhang of any Unit and exterior walls and siding of any Unit.

### **B. (1). Party Walls:**

(i) **General Rules of Law to Apply:** Each wall which is built as a part of the original construction of the dwelling upon the Properties and placed between the separate living quarters of a multi-family dwelling shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(ii) **Sharing of Repair and Maintenance:** The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(iii) **Destruction by Fire or Other Casualty:** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner(s) thereafter make use of the wall, they shall contribute to the costs of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution for the others under any rule of law regarding liability for negligent or willful acts or omissions.

(iv) **Weatherproofing:** Notwithstanding any other provisions of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(v) **Right to Contribution Runs with Land:** The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's heirs and successors in title.

(vi) **Arbitration:** In the event of any dispute arising concerning a party wall, or under any provisions of this Section, each party shall choose one arbitrator, who shall choose a third arbitrator to resolve such dispute. The decision shall be by a majority vote of all the arbitrators.

### **B. (2). Roof Maintenance and Shared Roofs:**

(i) **Roof Construction and Maintenance.** The Declarant's intent is to construct, or have constructed, the townhouses in such a manner which will result in a continuous roof between clusters of several adjoining townhouse dwellings. Each Lot Owner shall be responsible for repairing, restoring and maintaining that portion of the roof situated solely upon his/her/their Lot in substantially the same condition it exists at the time of the original conveyance, normal wear and tear excepted.

(ii) **Sharing of Repair and Maintenance of Joint Roof Area:** The costs of reasonable repair and maintenance of that portion of a roof shared by adjoining Lot Owners shall be in proportion to such use.

(iii) **Destruction by Fire or Other Casualty:** If any portion of a roof, shared by Lot Owners, is destroyed or damaged by fire or other casualty, any Owner whose townhome is benefitted by such roof may

restore it, and if the other Owners thereafter benefit from such restored roof, they shall contribute to the costs of restoration thereof in proportion to such benefit without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(iv) **Weatherproofing:** Notwithstanding any other provisions of this Section, an Owner who by his negligent or willful act damages or destroys a portion of any roof which benefits other townhouse dwellings shall bear the whole cost of repair or restoration.

(v) **Right to Contribution Runs with Land:** The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's heirs and successors in title.

(vi) **Arbitration:** In the event of any dispute arising concerning a damaged or destroyed roof, each party shall choose one arbitrator, who shall choose a third arbitrator to resolve such dispute. The decision shall be by a majority vote of all the arbitrators.

**C. Damaged or Destroyed Townhouse.** Each Owner covenants and agrees that in the event of partial loss or damage to a dwelling situated on such Owner's Lot, resulting in less than total destruction of the structure situated on the Lot, to repair and reconstruct the damaged structure in a manner as close as reasonably possible to the original construction. In the case of total destruction of the structure, the Owner shall make an election whether to rebuild/restore the structure within forty-five (45) days of such destruction, and deliver notice of such election to the Association. If the Owner elects not to rebuild/restore destruction, said Owner shall take such action as is necessary to prevent the deterioration and damage to any adjoining townhouse dwelling, including removal of any debris or unsightly conditions, not later than thirty (30) days following notice of its election not to rebuild/restore. In the event the Owner fails to take such action so as to prevent deterioration to any adjoining townhouse dwelling, or remove all debris within seventy-five (75) days of such damage, the Declarant or Association may do so and the costs and expenses shall be assessed against the Owner of such Lot. If the Owner elects to rebuild/restore the damaged/destroyed structure and improvements such rebuilding/restoration shall be completed within ninety (90) days following the date of such damage/destruction.

## **SECTION 10. INSURANCE AND BONDS:**

**A. Liability Insurance:** The Declarant, and/or Association, shall obtain and maintain a Comprehensive General Liability Insurance policy covering all Common Areas, streets, drives, easements, public ways and other areas that are under its supervision. The policy shall provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence, together with such additional coverage as the Declarant, and/or Association, shall deem reasonably necessary or desirable. The premium(s) for said policy shall be paid by the Association.

**B. Fidelity Bond:** The Association shall have fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. Any management agent with access to such funds shall be covered by its own fidelity bond. Except for fidelity bonds that a management agent obtains for its personnel, all other bonds shall name the Association as an obligee and their premiums shall be paid by the Association as a Common Expense. The fidelity bonds shall be in a sufficient amount to cover the aggregate of the following:

- (i) the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force;
- (ii) the sum of three (3) months assessments of all amounts in the Project; and
- (iii) all reserve funds of the Association.

**C. Obligation of Lot Owners to Maintain Hazard Insurance:** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with the Declarant, all other Owners and the Association that each Owner shall carry and maintain a homeowners or fire insurance policy which shall include public liability and blanket all-risk casualty insurance on the dwelling and other improvements

constructed and/or situated on such Owner's Lot, in the face amount of not less than 100% of the replacement costs of the improvements (the "Policy"). Each Owner shall deliver a copy of the Declaration page of the Policy to the Declarant or Association at such time(s) as the Declarant or Association may request.

**SECTION 11. RESTRICTIONS ON FURTHER SUBDIVISION:** No Lot which has been designated as such by Declarant by recorded plat shall be further subdivided or separated into smaller Lots. This restriction shall not apply, however, to Declarant.

**SECTION 12. LEFT INTENTIONALLY BLANK.**

**SECTION 13. RESERVATION OF EASEMENTS AND RIGHTS BY DECLARANT:**

Declarant hereby reserves for itself, its successors and assigns, for any purposes it deems useful to its development of the Properties, the development of other property adjoining the Project Area, or the development of other property to which Declarant may grant the benefit of such easements, those easements shown on any recorded map of any or all of the Project Area, or subsequently annexed property, within all party walls, and the following additional easements and rights:

**(A) Ingress, Egress, Drainage and Utilities Easements:** A perpetual easement for ingress, egress, regress, access, the installation and maintenance of utilities, further subdivision, and the right to dedicate to public use, over, under and upon all streets and drainage and utility easements, including those shown on any recorded map of the Properties and the water and sewer easements lying within any Parcel or Common Area;

**(B) Authority to Grant Easements:** The right to grant easements for the purposes of ingress, egress, regress, access, the installation, use and maintenance of utilities and further subdivision, over, under and upon (i) all streets shown on any recorded map of the Properties and (ii) the drainage, access and utility easements and easements for the water and groundwater storage easement systems located within the Properties, to any property outside the Properties to which Declarant deems the grant of such easements desirable, whether or not the property to which the easements are granted is owned by Declarant;

**(C) Installation of Facilities:** A perpetual easement over, under and upon all streets and drainage, access and utility easements shown on any recorded map of the Properties for the purpose of establishing, constructing and maintaining any underground utility, conduits and wires for telephone, electric power and other purposes and of laying, installing and maintaining facilities for sewage, potable and non-potable water, gas, storm drainage and other utilities therein. This reservation shall not be construed as an obligation of Declarant to provide or maintain any such activity or services;

**(D) Removal of Obstructions:** A perpetual access easement over, under and upon the Lots and Common Area to trim, cut and remove any trees and brush, or other obstructions necessary for the installation, operation and maintenance of utility lines, gas, water and sewer mains and other services for the convenience of the property owners and appurtenances thereto;

**(E) Transmission Cables:** A perpetual and exclusive easement for the installation and maintenance of radio and television transmission cables within the rights-of-way and easement areas reserved and defined above.

**(F) Street Lighting Agreement:** The Declarant reserves the right to subject all, or any portion of the Properties, to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lighting and/or entrance sign lighting, any or all of which may require an initial payment and/or a continuing monthly payment to an electric utility company by the Lot Owners.

**(G) Reservation of Development Rights and Special Declarant Rights.** The Declarant shall be entitled to exercise and hereby reserves for itself, its successors and assigns, the Development Rights and Special Declarant Rights set forth in Section 1.(F) for a period ending upon: (i) the conveyance of all building Lots or Units, or (ii) ten (10) years following the date of recordation of this Declaration, whichever occurs first.

**SECTION 14. ENFORCEMENT:**

The Declarant (whether or not the Declarant is the owner of any Lot), any Lot Owner and any party to whose benefit this Declaration inures may proceed at law and in equity to prevent the violation or attempted violation of any term, covenant or provision of this Declaration, either to restrain violation or to recover damages

for such violation and the court in any such action may award the successful party said party's reasonable expenses and costs in prosecuting such action, including reasonable attorney's fees.

#### SECTION 15. MODIFICATION:

**A. Amendments by Declarant Only:** The Declarant may amend this Declaration in accordance with the provisions set forth herein to add/annex additional property to this Declaration or to exercise any rights reserved in Section 13 hereof, without the consent or joinder of any Lot Owner.

**B. Other Amendments:** These covenants, easements and restrictions are subject to being altered, modified, canceled or changed at any time as to the Property as a whole, or as to any subdivided lot or part thereof, by written document executed by the Declarant or its successors in title, without the joinder or consent of any other Lot owner, so long as the Declarant owns at least one (1) Lot or Unit in the Subdivision, and recorded in the Office of the Register of Deeds of Pender County, North Carolina. The owners of lots to which at least sixty six and 2/3 percent (66.66%) of the votes in the Association are allocated, may alter, modify, cancel or change the covenants, easements and restriction of this Declaration, by written document, and recorded in the Office of the Register of Deeds of Pender County, North Carolina.

#### SECTION 16. TERM:

The covenants, easements and restrictions set forth herein are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration is recorded, after which such time said Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by sixty six and 2/3 percent (66.66%) of the then owners of the lots has been recorded, agreeing to change any provision herein, in whole or in part.

#### SECTION 17. SEVERABILITY:

Invalidation of anyone of these covenants by judgment or Court Order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed by its Manager, with authority duly given by its Members, the day and year first above written.

CAPITAL ASSET OSPREY DEVELOPMENT, LLC, a North Carolina limited liability company

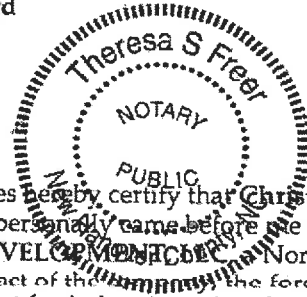
By: \_\_\_\_\_

Name: Christopher A. Plaford

Title: Manager

STATE OF NORTH CAROLINA  
COUNTY OF NEW HAMPSHIRE

Pender TSF



The undersigned, a Notary Public in and for said County and State, does hereby certify that Christopher A. Plaford, known to me or having provided satisfactory proof of his identity, personally came before me this day and acknowledged that (s)he is the Manager of CAPITAL ASSET OSPREY DEVELOPMENT, LLC, a North Carolina limited liability company and that by authority duly given and as the act of the said company, the foregoing instrument was signed in its name by him/her as its Manager for the purposes set forth therein and in the capacity indicated.

Witness my hand and official stamp or seal, this 21 day of August, 2023.

Theresa S Freer  
Notary Public

Printed Name: Theresa S Freer

My Commission Expires: March 7, 2024

**Exhibit "A"****Project Area**

Situated in Topsail Township, Pender County, North Carolina and more particularly described as follows:

Commencing at an existing Parker Kalon nail in the centerline intersection of NC Highway 210 and Shell Drive, thence leaving said centerline intersection and along the centerline of NC Highway 210 North 52 degrees 49 minutes 42 seconds East 23.41 feet to an existing Parker Kalon nail in said centerline, thence leaving said centerline South 68 degrees 42 minutes 40 seconds East 35.20 feet to an existing iron rod in the southern right-of-way line of NC Highway 210, thence along said southern right-of-way line North 52 degrees 49 minutes 42 seconds East 293.60 feet to an existing iron pipe in said southern right-of-way line and being THE TRUE POINT OF BEGINNING: thence from the above described true point of beginning and along said southern right-of-way line North 52 degrees 49 minutes 42 seconds East 190.00 feet to an existing iron pipe in said southern right-of-way line, thence leaving said southern right-of-way line South 53 degrees 43 minutes 35 seconds East 302.85 feet to an existing iron rod and being the northeastern corner of Lot 1, Phase I, Osprey Point as recorded in Map Book 36, Page 72 of the Pender County Registry, thence along the northern property line of Lot 1 - 4, Phase I, Osprey Point, as recorded in Map Book 36, Page 72, South 58 degrees 52 minutes 02 seconds West 202.80 feet to an existing iron rod and being the northwestern corner of Lot 4, Phase I, Osprey Point, thence leaving the line of Osprey Point, North 52 degrees 40 minutes 37 seconds West 279.12 feet to an existing iron pipe in the southern right-of-way line of NC Highway 210 and being the point and place of beginning. Being a portion of Tract 4, Division of Oyster Pond Tract and containing 1.237 acres as surveyed by Charles Francis Riggs, P.L.S. L-2981 on January 06, 2004. The courses contained within are correct in angular relationship and are referenced to Map Book 36, Page 72 of the Pender County Registry.

TOGETHER WITH a non-exclusive, perpetual easement across, over, under and through the 25' Private Access Easement shown on a survey for Townhouses of Osprey Point, Phase II recorded in Map Book 35, Page 135, Slide 519 in the Pender County Registry, reference to which is hereby made for a more particular description, for ingress and egress to and from the property herein described above (the "Benefitted Property") by the owner thereof, its successors, assigns, lessees, guests, invitees and licensees; also said easement for drainage and utility services for the Benefitted Property, and for construction, installation, paving, maintenance, repair and replacement of a road or street with curbing, gutters, underground and/or above ground drainage facilities, and underground and/or above ground utility installations (including, but not limited to, facilities for the provision of electricity, telephone, cable, water, sewer and/or gas) (the "Reserved Easement"). The Reserved Easement shall be appurtenant to and for the benefit of the Benefitted Property.

ALSO FURTHER TOGETHER WITH a 5' Private Pedestrian Easement to the Atlantic Ocean as shown on Lot 1, Phase I, Osprey Point as recorded in Map Book 36, Page 72 of the Pender County Registry and a 5' Private Exclusive Easement for Ingress, Egress and Regress to the Atlantic Ocean as recorded in Deed Book 2128, Page 215 of the Pender County Registry and as illustrated as a 5' Private Pedestrian Easement in Map Book 36, Page 72 of the Pender County Registry.

EXCEPTING, HOWEVER, the property described as follows:

Lot A (818-100), Lot B (818-102), Lot C (818-104), Lot/Unit D (818-106), Lot E (818-108), Lot F (818-110) and "COMMON AREA," all as shown and described on the plat entitled, "Survey of Townhouses of Osprey Point, Phase II," dated January 25, 2005, prepared by Charles F. Riggs & Associates, Inc. and recorded in Map Book 38, Page 135, Slide 519, in the Pender County Registry, subject to the terms, conditions and rights of others in the Reserved Easement described above.