

**AMENDED AND RESTATED BYLAWS  
OF  
BADIN SHORES RESORT OWNERS' ASSOCIATION, INC.**

**ARTICLE I  
IDENTITY**

The name of the corporation is Badin Shores Resort Owners' Association, Inc. The office of the Association shall be at the Property, or at such other place as may be subsequently designated by the Board of Directors. Meetings of "Members" and "Directors" may be held at such places within the State of North Carolina, County of Montgomery, as may be designated by the Board of Directors.

**ARTICLE II  
DEFINITIONS**

Section 1. "Association" shall mean and refer to Badin Shores Resort Owners' Association, Inc. and its successors and assigns.

Section 2. "Property" shall mean and refer to that certain real property described in the Amended and Restated Declaration of Covenants, Conditions and Restrictions Badin Shores Resort Owners' Association, Inc. recorded in the Montgomery County Public Registry, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean and refer to real property within Badin Shores Subdivision owned or leased by the Association, other than a Lot or an A-Lot as shown on various plats of the Property. It shall include all those areas of located within Badin Shores and shall include all private streets, if any, all water lines located outside public rights-of-way; public utility easements and dwelling units or sites; all sewer lines located outside public right-of-way; public sanitary sewer easements; the water distribution system; the sewage collection system; pathways; bath houses; boardwalks; recreation facilities; swimming pool; and any other areas, other than a Lot, which are for the common use and enjoyment of the Owners.

Section 4. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area and dedicated streets.

Section 5. "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 Property including contract sellers but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declaration" shall mean and refer to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Badin Shores Resort Owners' Association, Inc.

and any amendments thereto that are applicable to the Property recorded in the Office of the Register of Deeds of Montgomery County, North Carolina.

Section 7. "Member" shall mean and refer to those persons or entities entitled to membership in the Association.

Any other capitalized term bracketed in italics herein shall have the definition as provided for it in the Declaration.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to a lien for assessments 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.

Section 2. Voting Rights. Members shall be entitled to one (1) vote for each Lot owned. If more than one person holds an interest in any Lot, all such persons shall be Members. The vote or votes for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to the Planned Community Act.

### ARTICLE IV MEETINGS OF MEMBERS

Section 1. Annual Meetings. The annual meetings of the Members shall be held during each calendar year at such time and place as the Board of Directors may prescribe.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote at least ten percent (10%) of all the votes of the membership.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least twenty (20) days before such meeting (but not sooner than sixty days prior to such meeting) to each Member entitled to vote at such meeting, addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. If the meeting will be held by means of remote communication, the notice shall include all the information required by N.C.G.S. 55A-7-09. Waiver by a Member in writing of the notice required herein, signed by him before or after such meeting, shall be equivalent to the giving of such notice.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, twenty-five percent (25%) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Amended and Restated By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 6. Action Without Meeting. Action required or permitted to be taken at meeting of members may be taken without a meeting if the action is taken by all members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all members entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. Except as limited by the articles of incorporation or bylaws, a member's consent to action taken without a meeting may be in electronic form and delivered by electronic means.

Section 7. Conduct. When in dispute as to proper order or procedures in the conduct of any meeting of the Association or any provision contained herein, Roberts Rules of Order shall prevail, the latest edition at hand shall control over earlier editions of the same. Any Member or guest behaving in a manner disruptive to the meeting, as determined by the preceding officer, will be removed from the meeting.

## ARTICLE V

### BOARD OF DIRECTORS: QUALIFICATIONS, SELECTION AND TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of seven (7) Directors who must be Members of the Association.

Section 2. Qualifications. Members must meet each of the following qualifications to be eligible to serve on the Board of Directors:

- (a) Member must be at least eighteen (18) years of age at the time of election;
- (b) Regardless of ownership, including single or multiple Lots, in no event shall more than one (1) family member be eligible to serve on the Board of Directors at a given time. For the purpose of this qualification, family member is defined as spouse, parents, grandparents, siblings, children, grandchildren, in-laws, aunts, uncles or cousins;

(c) If more than one person holds an interest in any Lot, all such persons shall be Members, but in no event shall more than one (1) Member of said Lot be eligible to serve on the Board of Directors at a given time; and

(d) Member must be current on all assessments and fines.

Section 3. Election. Election to the Board of Directors shall be by secret written ballot cast by the Member or the Member's proxy at the annual meeting of the Members or by written ballot or electronic voting without a meeting pursuant to NCGS §55-A-08. At such elections, the Members or their proxies may cast one (1) vote for each Board of Director position that is vacant. Cumulative voting is not permitted. The persons receiving the largest number of votes shall be elected.

Section 4. Term of Office. The Members shall elect Directors for a term of two (2) years to replace or reelect the Directors for the then expiring terms. No Board of Directors shall consist of entirely new persons, and no Board of Directors shall, in its entirety, stand for election at any given time.

Section 5. Removal. Any Director may be removed from the Board, with or without cause, by a vote of the Members of the Association. Except as provided herein, a Director may only be removed if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors. Within sixty (60) days of death, resignation or removal of a Director, his/her successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. If the vacancy is created within ninety (90) days of the annual meeting, the seat shall remain vacant until the annual meeting at which time the seat shall be filled the Members.

Section 6. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

## ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly, at such time and place and with such notice as shall be determined by resolution of a majority of the Directors. Should said meeting fall on a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. The first regular meeting of the Board of Directors shall be held within thirty (30) days preceding the annual meeting of the Association.

In the absence of actionable business, the Board of Directors may vote, by a majority, to cancel no more than four (4) regular meetings each year. The Board of Directions must hold a

minimum of (8) regular meetings every twelve (12) months.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two (2) Directors, after not less than three (3) days' notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.

Section 4. Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

Section 5. Action Without Meeting. Action required or permitted to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents signed by each director before or after the action, describing the action taken, and included in the minutes or filed with the corporate records reflecting the action taken. As authorized in N.C.G.S. §55A-1-70, a director's consent to action taken without meeting may be in electronic form and delivered by electronic means.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common Area, the personal conduct of the Members and their guests thereon, and to establish penalties, including reasonable fines, for the infraction thereof;
- (b) suspend the voting rights during any period in which such Member shall be in default in the payment of any assessment, dues or charge levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation or the Declaration; declare the office of a member of the Board of Directors, to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of

Directors;

- (d) to employ a manager, an independent contractor, or such other employees as they deem necessary and to prescribe their duties for the management of the Property and the Association and to delegate to such contractor all of the powers and duties of the Association, except those which may be required by the Declaration to have approval of the Board of Directors or membership of the Association; provided, however, that any such management agreement shall not exceed a period of one (1) year from its effective date (but may be renewed by agreement of the parties for successive one-year periods), and shall be terminable for cause upon thirty (30) days written notice thereof;
- (e) To designate and name one or more committees annually, by resolution, for the purpose of completing an assigned task or providing recommendations to the Board of Directors on a particular topic. All committee actions must be approved in advance by the Board of Directors. Such committees shall consist of at least three (3) Members, one of whom shall be a Director. Such committee shall keep regular minutes of their actions and report the same to the Board of Directors as it requires;
- (f) employ attorneys to represent the Association when deemed necessary; and
- (g) act in all instances on behalf of the Association as set forth in N.C.G.S. §47F.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all of its acts and corporate affairs;
- (b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
  - (1) fix the amount of the annual assessment against each Lot;
  - (2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
  - (3) foreclose the lien against any property for which assessments penalties, charges or fines that remain unpaid.
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment or fine has been paid. A

reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment or fine has been paid, such certificate shall be conclusive evidence of such payment;

- (e) procure and maintain adequate liability and hazard insurance on the real and personal property owned by the Association;
- (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (g) cause the Common Area to be maintained; and
- (h) cause all other actions to be taken to satisfy the duties and obligations of the Association.

## ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president, vice-president, secretary, and treasurer. The president, vice-president and secretary shall at all times be members of the Board of Directors. The position of the Treasurer may be filled from within the membership of the Board of Directors or a qualified individual or firm as approved and contracted with by the Board of Directors. The treasurer will not vote on matters unless he/she serves on the Board of Directors. No one person shall hold more than one (1) of the aforesaid offices concurrently. The Board of Directors may appoint an Assistant Secretary and an Assistant Treasurer and such other appointed positions as the Board deems necessary, and to grant them the duties it deems appropriate.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors, provided, however, that no officer shall be removed except by the affirmative vote for removal of a majority of the entire Board of Directors. Any officer may resign at any time by giving written notice to the Board, the president or secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time

specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Duties. The duties of the officers are as follows:

- (a) President. The president shall be the chief executive officer of the Association. He/She shall preside at all meetings of the Board of Directors and meetings of Members; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and absent some resolution from the Board of Directors specifying otherwise, shall co-sign all checks and promissory notes. In the event the Association employs an Operations Manager, the President shall serve as his/her direct supervisor.
- (b) Vice-President. The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act; may, together with the secretary or assistant secretary, sign leases, mortgages, deeds and other instruments of conveyance; and shall exercise and discharge such other duties as may be required of him by the Board.
- (c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the Members, keep appropriate current records showing the Members of the Association, together with their addresses, and shall perform such other duties as required by the Board.
- (d) Treasurer. The Treasurer shall be responsible for the following:
  - (1) Oversight and supervision, along with the official record, of the Association funds and securities;
  - (2) Complete and accurate record of all receipts, disbursements and transactions of Association funds;
  - (3) Development and implementation of the annual budget;
  - (4) Disbursement of funds in accordance with the annual budget;
  - (5) Provide monthly financial reports to the Board of Directors;



- (6) Report assessments, collections and delinquencies to the Board of Directors; and
- (7) Ensure the timely completion and reporting of the annual audit of all Association accounts. The audit shall be made annually by a Certified Public Accountant, and a copy of the report shall be available for inspection by the members at the office of the Association not later than six (6) months after the end of the year for which the report is made.

#### ARTICLE IX BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member, as that term is defined in the Declaration. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

#### ARTICLE X ASSESSMENTS

Section 1. General. As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessments, fees, penalties and fines are not paid within thirty (30) days after the due date, the Member will be assessed a late payment penalty, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of the assessments. 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 or her Lot.

Section 2. Annual Budget. The Board shall cause to be prepared an estimated annual budget for each fiscal year of the Association. The annual budget shall provide for a reserve for contingencies for the year and a reserve for capital expenditures, in reasonable amounts as determined by the Board.

Section 3. Records and Statement of Account. The Board shall cause to be kept detailed and accurate records of the receipts and expenditures affecting the Common Area and Common Elements, specifying and itemizing the common expenses incurred by the Association.

Section 4. Discharge of Liens. The Board may cause the Association to discharge any

mechanic's lien or other encumbrance which in the opinion of the Board may constitute a lien against the Property or the Common Elements, other than a lien against only a particular Lot. When less than all the Owners are responsible for the existence of any such lien, the Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees, incurred by reason of such lien.

Section 5. Forbearance. The Association shall have no authority to forebear the payment of annual assessments or special assessments by any Owner.

## ARTICLE XI CONTRACTUAL POWERS

No contract or other transaction between the Association and one or more of its Directors or between the Association and any corporation, firm or association in which one or more of the Directors of the Association are Directors, or are financially interested, is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof which authorizes or approves the contract or transaction or because his or her or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

- (a) the fact of the common directorship or financial interest is disclosed or known to the Board or committee and noted in the minutes and the Board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting. the vote or votes of such Director or Directors; or
- (b) the contract or transaction is just and reasonable as to the corporation at the time it is authorized or approved.

## ARTICLE XII INDEMNIFICATION

Section 1. General. The Association shall indemnify and hold harmless each of its Directors and officers, each member of any committee appointed pursuant to the By-Laws of the Association, and the Board against all contractual and other liabilities to others arising out of contracts made by or other act of such Directors, officers, Board, or committee members, on behalf of the Owners, or arising out of their status as Directors, officers, Board, or committee members, unless any such contract or act is contrary to the provisions of the laws of the State of North Carolina, the Declaration or these By-Laws or shall have been made fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all cost and expenses (including, but not limited to, counsel fees, amounts of judgment paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such Director, officer, Board, or committee member may be involved by virtue of such persons being or having been such Directors, officer, Board, or committee

member; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his or her duties as such Director, officer, Board, or committee member; or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance of his or her duties as such Director, officer, Board, or committee member.

Section 2. Success on Merits. To the extent that a member of the Board of Directors or an officer of the Association or a member of any committee appointed pursuant to the By-Laws of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1; or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonable incurred by him or her in connection therewith.

Section 3. Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of any undertaking by or on behalf of the person or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article.

Section 4. Miscellaneous. The Association and the Board shall have the power to raise and the responsibility for raising by special assessment or otherwise, any sums required to discharge its obligations under this Article. Every agreement made by the Directors, Board, officers, members of such committees or by the any managing agent on behalf of the Association, shall provide that the Directors, Board, officers, members of such committees, or the Managing Agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board of Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. Such right to indemnification shall continue as to any person or entity who has ceased to be in a member of the Board of Directors, offices of the Association or a member of such committee, and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of such person or entity.

### ARTICLE XIII MISCELLANEOUS

Section 1. Fidelity Bond. The Board may require (1) that all officers, employees or other persons who. either handle or are responsible for funds held or administered by the

Association shall furnish fiduciary insurance coverage which covers the maximum amount of funds that will be in custody of the Association plus the Association reserve funds, the premium cost of which will be paid by the Association and (2) that all management companies who either handle or are responsible for funds held or administered by the Association shall furnish a fidelity bond to the Association which covers the maximum amount of Association funds and the Association reserves that will be in the custody of the management company, the premium cost of which will be paid by the Association, and shall at all times maintain a separate account for each reserve fund, for the total operating funds of the Association managed by the management company and for all other monies of the management company. The management company may hold all operating funds of the Association which it manages in a single operating account but shall at all times maintain records identifying all monies of each Association on such operating account.

Section 2. Application of Documents to Lessees of a Lot. The Declaration, Bylaws, and other Rules and Regulations of the Association shall be applicable to any person leasing any Lot and shall be deemed to be incorporated in any lease for any Lot in the Property.

#### ARTICLE XIV CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: Badin Shores Resort Owners' Association, Inc., North Carolina.

#### ARTICLE XV FISCAL YEAR

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, provided, however, that the Board of Directors is expressly authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America, at such time as the Board of Directors deems it advisable.

#### ARTICLE XVI AMENDMENTS AND CONFLICT

Section 1. Amendment. These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of sixty-seven percent (67%) of a quorum of Members present in person or by proxy.

Section 2. Conflict. In the case of any conflict between the Articles of Incorporation and the Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

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