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NORTH CAROLINA  
MONTGOMERY COUNTY

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
AND RESTRICTIONS  
FOR BADIN SHORES RESORT  
OWNERS' ASSOCIATION, INC.**

**THIS DOCUMENT REGULATES OR PROHIBITS  
THE DISPLAY OF POLITICAL SIGNS**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, AND RESTRICTIONS FOR BADIN SHORES RESORT OWNERS' ASSOCIATION, INC. (the "Declaration") made and executed this \_\_\_\_ day of \_\_\_\_\_, 2022, by BADIN SHORES RESORT OWNERS' ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns (hereinafter referred to as "Association").

**WITNESSETH:**

WHEREAS, by the following instruments recorded in the Montgomery County Registry, Badin Shores (the "Property") subjected to the following Declaration of Covenants and Restrictions (the "Declaration") and amendments to the same:

- a) Book 438 Page 205.

WHEREAS, the Declaration applies to and runs with the land described on **Exhibit "A"** attached hereto.

WHEREAS, the Association is a duly established non-profit North Carolina Corporation established for the management of Badin Shores Resort Subdivision (the "Property"), which is located on certain property situated on Badin Lake, Montgomery County, North Carolina, more

fully described by documents, maps, and other instruments, all as duly filed in the office of the Register of Deeds of Montgomery County, North Carolina.

WHEREAS, the Association seeks to restrict said property to the use as a residential recreational vehicle resort; as defined by State of North Carolina, Montgomery County, North Carolina, Recreational Vehicle Industry Association (RVIA), and American National Standards Institute (ANSI) 119.5 as of the date of the recordation of this Declaration.

WHEREAS, the Association desires to provide for the preservation of certain values and amenities for the Property, and to this end, desires to subject the Property, together with any additions thereto as may be made to the covenants, restrictions, easements, affirmative obligations, charges and liens, herein set forth and all of which is hereby declared to be for the benefit of said Property and each and every Owner of any and all parts thereof.

WHEREAS, the covenants, conditions, restrictions, charges and liens set forth in the Declaration are intended to further a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment of the Property.

NOW, THEREFORE, the Association hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties, their heirs, successors and assigns having any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

## **ARTICLE I** **DEFINITIONS**

Any capitalized term first appearing in quotation marks herein and not otherwise defined herein shall have the meaning as provided in the “Planned Community Act” (defined herein below).

**Section 1.** “**Amenities**” shall mean and refer to the facilities constructed, erected, or installed on the Common Area for the use, benefit and enjoyment of Members.

**Section 2.** “**ANSI Park Model**” shall mean and refer to a transportable recreational vehicle, labeled to RVIA/ANSI 119.5 standard with a body width not exceeding twelve (12) feet, built on a single chassis that does not exceed four hundred (400) square feet in set-up mode. The ANSI Park Model is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances.

**Section 3.** “**Association**” shall mean and refer to **BADIN SHORES RESORT OWNERS’ ASSOCIATION, INC.**, its successors and assigns.

**Section 4.** “**Badin Shores Resort Owners’ Association Building Committee**” shall be referred to herein as “**BSROA Building Committee**”.

**Section 5.** “**Board of Directors**” or “**Board**” shall mean and refer to those persons elected or appointed pursuant to the By-Laws of Badin Shores Resort Owners’ Association Inc. and acting collectively as the Directors of the Association.

**Section 6.** “**Common Expenses**” shall mean and include:

- a) All sums lawfully assessed by the Association against its members;
- b) Expenses of administration, maintenance, repair and replacement of real and personal property owned by the Association;
- c) Expenses of administration, maintenance, repair, or replacement of the Common Area;
- d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase;
- f) Ad valorem taxes and public assessment charges lawfully levied against Common Area;
- g) Expenses agreed by the Members to be common expenses of the Association; and
- h) Unpaid assessments resulting from the purchase of a dwelling at a foreclosure sale (such assessment shall be collectible from all members of the Association, including the purchaser at the foreclosure sale, his successors, and assigns).

**Section 7.** “**Common Elements**” or “**Common Area(s)**” 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; recreation facilities; swimming pool; and any other areas, other than a Lot or an A-Lot, which are for the common use and enjoyment of the Owners.

**Section 8.** “**Lot**” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property on which such plot appears, with the exception of Common area or Common Elements, if any. It is recognized that easements may be a portion of a Lot.

**Section 9.** “**Member**” shall mean and refer to every person or entity who holds membership in the Association.

**Section 10.** “**Modular**” shall mean and refer to a one-story dwelling assembly not exceeding nine hundred twelve (912) square feet, manufactured by a North Carolina licensed manufacturer, in compliance with North Carolina Modular Building Code, that contains a North Carolina Validation Stamp.

**Section 11.** “**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 12.** “**Planned Community Act**” shall mean and refer to the provisions of Chapter 47F of the North Carolina General Statutes as amended from time to time.

**Section 13.** “**Recreational Vehicle**” or “**RV**” shall mean and refer to those vehicles described in each of the following: Montgomery County RV Resort Ordinance; the Badin Shores RV Resort Building Rules; ANSI 119.5; and RVID Certification as of the date of the recordation of this Declaration that are no less than twenty-four (24) feet.

**Section 14.** “**Unit**” shall mean and refer to an approved recreational vehicle as defined in Article I, Section 13 herein.

## **ARTICLE II** **PROPERTY AND RIGHTS IN THE COMMON AREA**

**Section 1.** **Annexation of Property.** If a person or entity desires to add property to the scheme of this Declaration, such property may only be added with the assent of sixty-seven percent (67%) of the votes of the Association.

**Section 2.** **Members’ Easements of Enjoyment.** Subject to the provisions of the Declaration and the rules and regulations of the Association, every member shall have a right and easement of enjoyment in and to the Common Elements and such easement shall be appurtenant to and shall run with the title of every Lot.

**Section 3.** **Delegation of Use.** Any Member may delegate in accordance with the By-Laws of the Association, his right to enjoyment to the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside on such Member’s Lot.

**Section 4.** **Extent of Members’ Rights and Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

- a) The right of the Association, in accordance with its Articles of Incorporation, to borrow money for the purpose of improving the Common Elements and in aid thereof to mortgage said properties. The right to borrow money must be subordinated to the Declaration. The Association may not use easement property as security for any loan;

- b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;
- c) The right of the Association to suspend the enjoyment of rights of any Member or any tenant of any Member for any period during which any assessment remains unpaid; and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligations to pay the assessment;
- d) The right of the Association to impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Owners;
- e) The right of the Association to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which regulations may further restrict the use of the Common Elements;
- f) The right of the Association to give, sell or lease all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; and
- g) The right of the Association to exercise any other rights conferred on such associations pursuant to the terms of the Planned Community Act.

### **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. Class of Membership.** The Association shall have one class of voting membership. 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** **COVENANTS FOR ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (a) annual assessments or

charges as provided herein including interest and late fees, costs and reasonable attorney's fees; (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (c) to the appropriate governmental taxing authority: (1) a pro rata share of ad valorem taxes levied against the Common Area and (2) a pro rata share of assessments for public improvements to or for the benefit of the Common Area if the Association shall default in the payment of either or both for a period of six (6) months. The annual and special assessments (and any construction fee, penalties and fines) together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment and charge, 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 or charge fell due. The personal obligation for the delinquent assessments or charges shall not pass to his successors in title unless expressly assumed by them.

Such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

**Section 2. Purpose of Assessments.**

- a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property, related to the maintenance, use and enjoyment of the Common Area, or to those improvements outside of the Common Area but which benefit the Property, including but not limited to the maintenance of streets within the Common Area that have not been accepted for dedication by a public authority, roadway medians and islands, privacy walls, storm drainage facilities; the maintenance of any private drainage easements located within the Property; and sidewalks and street lights. Expenditures may include but are not limited to the following: the costs of repairs; replacements and additions; the cost of labor; equipment; materials; management and supervision; the extension and provision of utility services to the Common Area; the payment of taxes assessed against the Common Area and/or the payment of assessments for public improvements to the Common Area assessed by any governmental body having jurisdiction over the Common Area; the procurement and maintenance of insurance (including, but not necessarily limited to, hazard and liability insurance in such amounts as the Association deems just and proper); the employment of attorneys and other professionals to represent the Association when necessary, water and sewer service; and such other needs and expenses as may arise and that are related to the purposes of the Association as stated herein.
- b) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws. As monies for any assessment are paid unto the Association by any Owner, the same may be commingled with

monies paid to the Association by the other Owners unless specifically identified otherwise. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Property.

- c) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Property which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for Common Expense.

**Section 3. Maximum Annual Assessment.** All assessments shall be shared equally by the Owners of each Lot.

- a) The maximum annual assessment for each calendar year shall be established by the Board. The maximum annual assessment for all Lots may be increased by the Board without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year.
- b) The maximum annual assessment for each calendar year may be increased without limit by a vote of sixty-seven percent (67%) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- c) The Board shall fix the annual assessment at an amount not in excess of such maximum annual assessment.

**Section 4. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, a special assessment to cover the obligations of the Association and/or the costs of any construction, reconstruction, repair or replacement of (a) capital improvements upon the Common Area or (b) other Maintained Improvements, including fixtures and personal property related thereto, provided that any such special assessment shall have the assent of 1) a majority of the Board voting at a meeting duly called for this purpose or 2) sixty-seven percent (67%) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose or by written ballot or electronic voting without a meeting, written notice of which shall be sent to all members in accordance with the Bylaws of the Association. The amount of the proposed assessment need not be stated. Such special assessments may be collected on a monthly, quarterly or annual basis.

**Section 5. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall be collected on a monthly, quarterly, semi-annual or annual basis as determined by the Board, in advance.

At least thirty (30) days in advance of each annual assessment period, the Board shall fix the amount of the annual assessment and shall send written notice to every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot has been paid.

**Section 6. Effect of Nonpayment of Assessments: Remedies of the Association.** Assessments authorized by this Declaration shall be due and payable on the dates established by the Board from time to time. Fees, fines and penalties authorized by this Declaration shall be due and payable thirty (30) days after written notice thereof from the Association to the Owner. Any assessment, fee, fine or penalty not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of eighteen percent (18%) per annum. In addition, the Association may charge a reasonable late fee, the amount of which to be established from time to time by the Board for assessments not paid within thirty (30) days after the due date. The Association may bring an action at law against the Owner personally obligated to pay any past due assessment fee, fine or penalty or may foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of deeds of trust. Interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

**Section 7. Effect of Default in Payment of Ad Valorem Taxes or Assessments for Public Improvements by Association.** Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the Association. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives or assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot.

**Section 8. Subordination of the Lien to Mortgages.** The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. The sale or transfer of any Lot shall not affect the lien or liens provided for in the preceding Sections. However, the sale or transfer of any Lot which is subject to any such first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments, fees, fines or penalties as to the payment thereof which shall have become due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any



assessments, fees, fines or penalties thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

**Section 9. Exempt Property.** All property dedicated to, and accepted by, a local public authority and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein.

## **ARTICLE VI** **ARCHITECTURAL CONTROL**

**Section 1. The Building Committee.** The BSROA Building Committee consisting of five (5) to seven (7) members shall be appointed or reappointed to a three (3) year term by the Board of Directors at the Board of Directors meeting immediately following the annual meeting of the Association.

The BSROA Building Committee shall review new construction, additions and remodeling that affect the exterior appearance of a Lot and/or Recreational Vehicle.

**Section 2. Purpose.** The primary purpose of the BSROA Building Committee is to regulate the external design, appearance, use and location of initial construction and subsequent additions to the subject property and of improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. The BSROA Building Committee, subject to approval by the Board of Directors, may from time to time make and publish specifications for the nature, kind, shape, height, and materials of improvements that it deems appropriate.

**Section 3. Conditions.** No recreational vehicle, improvements, alterations, repairs, excavations, parking pad, driveway, sidewalk or changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date the Lot was first conveyed in fee to an Owner shall be brought to, made or done without the prior written approval of the BSROA Building Committee. The BSROA Building Committee shall approve the location of all improvements on the Lot which are visible or could be expected to become visible from any location within the Property other than the Lot in question. The BSROA Building Committee shall also exercise its duties pursuant to Article VI and VII herein.

Prior approval shall also be necessary for repairs, upgrades or modifications which change the dimensions, the appearance, or access to any existing recreational vehicle or other improvement. All plans and changes thereto must be submitted in writing; certain forms of electronic submission may be deemed acceptable.

**Section 4. Procedure.** Any person desiring to make any improvement, alteration or change described in Section 3 above shall submit to the Association the completed Badin Shores Building Permit, and the plans and specifications thereof, showing the nature, kind, shape,

height, materials and location on the site of the improvement. The submitted plans and specifications shall include the following:

- a) Documents required by Montgomery County for the issuance of a building permit;
- b) A sample of the type of material and/or colors to be used;
- c) A clearing and grading plan;
- d) A landscape plan including any change in lot drainage; and
- e) Any other documents required by the BSROA Building Committee for a particular project.

Upon approval by the BSROA Building Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications as approved, shall be deposited for permanent record with the Association and a copy of such plan and specific action bearing such approval, in writing, shall be returned to the applicant submitting the same.

The BSROA Building Committee shall evaluate such plans and specifications in light of the purpose of this Article as set forth in Section 2 herein. In the event the BSROA Building Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form within thirty (30) days after written request for final approval or disapproval, such plans and specifications shall be deemed approved. The applicant may appeal an adverse BSROA Building Committee decision to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors.

Unless specifically excepted by the BSROA Building Committee, all improvements for which approval of the BSROA Building Committee is required under this Declaration shall be completed within six (6) months from the date of approval of said improvements or within the time deemed appropriate by the BSROA Building Committee, not to exceed six (6) months (the "Construction Phase").

**Section 5. Property Maintenance.** Owners shall keep all parts of their Lot, recreational vehicle exterior in good order and repair and free of debris. This includes, but is not limited to, removal of visible debris, dead landscape plants, bushes, trees, etc. and generally maintaining grounds and property in accordance with accepted community standards. If any Owner, after Notice and Opportunity for Hearing, fails to discharge his or her repair, maintenance or upkeep responsibilities in a reasonable and prudent manner to a standard harmonious with that of other Lots, in the sole discretion of the BSROA Building Committee, the Association, after providing the Owner with Notice and an Opportunity to be heard, shall have the right to cause such repair, maintenance and upkeep to be performed and to charge the cost thereof as a part of and in addition to the annual assessment attributable to the Lot and provided for in this Declaration.

There is specifically reserved unto the BSROA Building Committee, the right of entry and inspection upon any Lot during the Construction Phase for the purpose of determination by the BSROA Building Committee whether there exists any construction of any improvement which violates the terms of any approval by the BSROA Building Committee or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. The Board of Directors is specifically empowered to enforce the provisions of the Declaration by any legal or equitable remedy and in the event, it becomes necessary to resort to litigation to determine the propriety of any constructed improvements, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorney's fees in connection therewith.

Notwithstanding the fact that the Association shall provide maintenance of the Common Area, an Owner(s) shall be liable for the expense of any maintenance, repair or replacement rendered necessary by acts of negligence, or carelessness of same by any family member, guests, invitees, employees, or agents, but only to the extent that such expenses are not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of the Common Area.

## **ARTICLE VII** **RESTRICTIONS**

**Section 1. Land Use.** The Property is residential recreational vehicle resort, as defined by State of North Carolina, Montgomery County, North Carolina, Recreational Vehicle Industry Association (RVIA), and American National Standards Institute (ANSI) 119.5, as of the date of the recordation of this Declaration. Residential recreational vehicles include modern RIVA/NFPA labeled travel trailers, motor homes, fifth wheels, RVIA/ANSI Park Trailers (Park Models) and modular RV models. The following recreational vehicles are specifically not permitted: any trailer less than twenty-four (24) feet. (excluding tongue), any collapsible, pop-up, fold out or soft walled trailers, any pick-up campers, 'Tiny Homes', Park Model 'Tiny Homes,' or any other manufactured home and mobile homes.

Each Lot is allowed one (1) recreational vehicle no older than ten (10) years or modular structure and one (1) outdoor storage structure. Each unit is allowed one (1) heated addition, one (1) outdoor structure, one (1) entry porch, and one (1) walkway.

No Lot shall be used for a commercial purpose, including for-profit and non-profit purposes.

**Section 2. Animals.** No animals, livestock or poultry of any kind shall be raised or kept or maintained on any Lot or in any dwelling except for dogs, cats and small birds, (referred to herein as "Household Pets"). Swine, whether wild, domesticated or a household pet, is not allowed to remain on any Lot. Dog pens are not permitted on any Lot. No Household Pet shall be permitted on any portion of the Common Area unless they are on a leash or otherwise properly restrained, nor shall any such animal be left within the Common Area unattended. All Household Pets shall be kept and maintained in compliance with all applicable laws and ordinances relating

thereto. The Owner of any Lot shall be responsible for providing the elimination of all waste created by the Household Pets kept on such Owner's Lot from the Common Area and their respective Lot at the time such waste is created.

**Section 3. Setback Requirements.** Unless approved in writing by the BSROA Building Committee, no recreational vehicle or recreational structure or accessory may be located on any Lot nearer to any right of way line than ten (10) feet nor nearer than five (5) feet to the rear lot line and any interior lot line.

**Section 4. Solar Technologies.** The installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity are permitted upon architectural approval, except in locations that are visible by a person on the ground (a) on the façade of a structure that faces areas open to Common Area or areas of public access, (b) on a roof surface that slopes downward toward Common Area or areas of public access that the façade of the structure faces, or (c) within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade and Common Area or areas of public access faced by the structure. Installation of a solar collector must be performed by a North Carolina licensed solar contractor.

**Section 5. Fencing.** The following restrictions and guidelines apply to all fencing within the Association:

- a) All proposed fencing shall be flagged or staked in the field for review by the BSROA Building Committee.
- b) The BSROA Building Committee retains the discretion of requiring an increased setback as is deemed necessary onsite specific situations.
- c) No fence shall exceed four (4) feet in height.
- d) No chain link or solid stockade fences are permitted.

**Section 6. Parking Pad.** A parking pad of not less than eight (8) feet by twenty (20) feet located out of the dedicated right of way is required on each Lot.

**Section 7. Landscaping Changes.** Minor landscape improvements, plantings and maintenance do not require architectural approval. A landscaping improvement, planting and maintenance is deemed minor if the changes do not materially change the existing landscaping plan or scheme. By way of illustration and not of limitation, in order to qualify as a minor landscaping change, the change shall not modify the existing ground elevation and water run-off or materially affect surface ground of the surrounding Lots. No trees larger than six (6) inches in diameter shall be cut down or removed from a Lot without architectural approval.

**Section 8. Signs.** No sign, banner or poster shall be placed or allowed to remain on any Lot except for one (1) seasonal flag, one (1) "For Sale" sign, or one (1) other temporary sign to

advertise the name of a contractor performing services at the time of such display, political signs during the forty-five (45) day period prior to an election day and the seven (7) day period after an election day, a yard sale or other temporary activity on the Lot. Political signs must be in accordance with the applicable ordinances regarding political signs. Such yard sale or other temporary sign shall not be permitted to remain on any Lot for more than seventy-two (72) consecutive hours. No sign deemed by the Association to be a nuisance or a detriment to the Property shall be permitted or allowed to remain on any Lot within the Property. No sign or seasonal flag shall be greater than six (6) square feet in surface area.

**Section 9. Motorized Vehicles.** No wrecked, abandoned, discarded or junked vehicle, trailer, watercraft, equipment or material of any kind shall be placed or be permitted to remain on any Lot. Unlicensed vehicles, including, but not limited to mini bikes, motor bikes, motor scooters, ATVs, and go-carts are not permitted on the Property. All vehicles, including golf carts, on the Property, including a Lot, must be fully operable, properly inspected and licensed according to the law, and registered with the Association. The Association registration must be visibly displayed on the vehicle at all times. All vehicles, including golf carts, within the Property shall only be operated by a person with a valid driver's license.

**Section 10. Watercraft and Trailers.** All watercraft and trailers on the Property, including a Lot, must be registered with the Association. The Association registration must be visibly displayed on the watercraft and trailer at all times.

**Section 11. Carports.** Carports are prohibited. Parking under any free-standing structure is prohibited.

**Section 12. Leases on Lots and Limitation on Rentals.** All Lots being rented and leased must be registered with the Association providing the name and address of the Owner(s) of the Lot, the names of all tenants leasing the Lot, the starting date and ending date of the lease term in addition to any other requirements for leased property found herein.

Any Lease Agreement between an Owner and a lessee for the lease of such Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease.

All leases of Lots shall be for the entire Lot, not a portion thereof, unless the Owner(s) also resides in the dwelling for the entire duration of the lease and only one (1) lease is allowed per Lot at any given time. No sub-leases are allowed.

**Section 13. Fires.** No open fires of any kind, including those for burning rubbish and debris, shall be permitted on the Property except within a metal or pottery cooking, barbecuing or brazing device or within a masonry fireplace, barbecue or fire pit, provided however, that special burning or fire permits may be issued by the Association. Fires must be attended by an adult at all times and must be thoroughly extinguished by wetting or burying upon completion of enjoyment.

**Section 14. Firearms and Hunting.** No firearms shall be discharged on the Property except in lawful protection of human life. All hunting is prohibited on the Property.

**Section 15. Quiet Enjoyment and Nuisance.** No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to residents within the Property.

## **ARTICLE VIII** **EASEMENTS**

**Section 1. General Easements.** An easement for the installation and maintenance of utility services and for drainage ditches shall be used by the Board of Directors, or its assigns, for such installation and maintenance, together with the right to trim, cut or remove any structure, trees, or bush necessary for the above purposes. The Owner shall have no cause of action against the Association, Board of Directors, or its assigns, either at law or in equity by reason of any damage caused said Lots in the installation, operation or maintenance of above-mentioned utilities, except in case of gross negligence.

**Section 2. Walks, Drives, Parking Areas, and Utilities.** All of the Property is subject to easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, cable television lines, and other public utilities previously established, and the Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

**Section 3. Easement for Government Agencies.** An easement is hereby established over the Common Area for the benefit of applicable governmental agencies, public utility companies and public service agencies necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas, cable television lines, firefighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

**Section 4. Boat Ramp and Launch Facilities.** Easements are reserved as may be required by governing agencies, so that any and all users of the boat ramp and launch facility may have ingress, egress, and regress to the boat ramp and launch facility.

**Section 5. Unintentional Encroachments.** In the event that any improvements on a Lot (not specifically approved or permitted pursuant to this Declaration) shall encroach upon any Common Elements or upon any other Lot for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Elements or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Elements into any such Lot for so long as such encroachment shall naturally exist.

## **ARTICLE IX** **INSURANCE**

**Section 1. Liability Insurance.** The Board of Directors of the Association shall obtain liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements and any other property owned by the Association.

**Section 2. Property Insurance.** The Board of Directors of the Association shall obtain property insurance on the Common Elements and any other property owned by the Association insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

## **ARTICLE X** **GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

In any proceeding arising because of an alleged failure of an Owner to comply with the terms of this Declaration, By-laws, Rules and Regulations adopted pursuant thereto, and said documents as they may be amended from time to time; and any actions brought by the Association to enforce such documents or otherwise in defense of any action, suit or proceeding, or in defense of any claim, issue or matter herein, the Association shall be entitled to recover from said Owner the costs of the proceedings, including reasonable attorney fees, should the Association prevail. The costs and fees shall be assessed against the Lot in question.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 3. Amendment.** The Declaration may be amended only by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded in the Office of the Register of Deeds of Montgomery County to be effective and enforceable.

**Section 4. Declaration to Be Controlling Document.** In the event of a conflict between the terms of the Declaration with either the Articles of Incorporation or the Bylaws, the Declaration shall be deemed to be the controlling document.

**IN WITNESS WHEREOF**, by the authority of its Board of Directors, Badin Shores Resort Owners' Association, Inc. hereby certifies that the foregoing instrument has been duly adopted by sixty-seven percent (67%) of the votes of the Members of the Association and is, therefore, a valid Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Badin Shores.

This the \_\_\_\_ day of \_\_\_\_\_, 2022.

Badin Shores Resort Owners' Association, Inc.

By:

\_\_\_\_\_  
President, Badin Shores Resort Owners' Association, Inc.

ATTESTED:

\_\_\_\_\_  
Secretary, Badin Shores Resort Owners' Association, Inc.

I, \_\_\_\_\_, Secretary of Badin Shores Resort Owners' Association, Inc. certify that \_\_\_\_\_ acknowledged that s/he is the President of Badin Shores Resort Owners' Association, Inc., a corporation, and that s/he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand this the \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Secretary, Badin Shores Resort Owners' Association, Inc.



STATE OF NORTH CAROLINA  
\_\_\_\_\_ COUNTY

I, the undersigned Notary Public, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that s/he is the President of Badin Shores Resort Owners' Association, Inc., and that s/he has executed the foregoing instrument as its President.

WITNESS my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2022.

My Commission Expires:

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_

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STATE OF NORTH CAROLINA  
\_\_\_\_\_ COUNTY

I, the undersigned Notary Public, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that s/he is the Secretary of Badin Shores Resort Owners' Association, Inc. and that s/he has executed the foregoing instrument as its Secretary.

WITNESS my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2022.

My Commission Expires:

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_

## Exhibit "A"

The following Plat Book and Pages of the Montgomery County Register of Deeds:

- Plat Book B, Page 276;
- Plat Book B, Page 280;
- Plat Book B, Page 291;
- Plat Book B, Page 292;
- Plat Book B, Page 306;
- Plat Book B, Page 307;
- Plat Book B, Page 308;
- Plat Book B, Page 309;
- Plat Book B, Page 310;
- Plat Book B, Page 311;
- Plat Book B, Page 312;
- Plat Book B, Page 372;
- Plat Book B, Page 373;
- Plat Book B, Page 374;
- Plat Book B, Page 375;
- Plat Book B, Page 380;
- Plat Book B, Page 381;
- Plat Book B, Page 382;
- Plat Book B, Page 383;
- Plat Book B, Page 384;
- Plat Book B, Page 385;
- Plat Book C, Page 1B;
- Plat Book C, Page 1C;
- Plat Book C, Page 1D;
- Plat Book C, Page 2A;
- Plat Book C, Page 5C;
- Plat Book C, Page 5D;
- Plat Book C, Page 6A;
- Plat Book C, Page 6B;
- Plat Book C, Page 11B;
- Plat Book C, Page 11C;
- Plat Book C, Page 11D;
- Plat Book C, Page 12A;
- Plat Book C, Page 12C;
- Plat Book C, Page 14C;
- Plat Book C, Page 14D;
- Plat Book C, Page 15A;
- Plat Book C, Page 15B;
- Plat Book C, Page 15C;
- Plat Book C, Page 19A;

- Plat Book C, Page 29B;
- Plat Book C, Page 29C;
- Plat Book C, Page 29D;
- Plat Book C, Page 30A;
- Plat Book C, Page 30B;
- Plat Book C, Page 34D;
- Plat Book C, Page 38B;
- Plat Book C, Page 43B;
- Plat Book C, Page 46A;
- Plat Book C, Page 47A;
- Plat Book C, Page 47B;
- Plat Book C, Page 48C;
- Plat Book C, Page 50C;
- Plat Book C, Page 60B;
- Plat Book C, Page 60D;
- Plat Book C, Page 79B;
- Plat Book C, Page 91A;
- Plat Book C, Page 138C;
- Plat Book C, Page 153A;
- Plat Book D, Page 166B;
- Plat Book D, Page 166C;
- Plat Book D, Page 166C;
- Plat Book D, Page 173C;
- Plat Book D, Page 173D;
- Plat Book D, Page 174A;
- Plat Book D, Page 174B;
- Plat Book D, Page 174C;
- Plat Book D, Page 174D;
- Plat Book D, Page 175A;
- Plat Book D, Page 175B;
- Plat Book E, Page 78A;
- Plat Book E, Page 98B;
- Plat Book E, Page 98C;
- Plat Book E, Page 99A;
- Plat Book E, Page 99B;
- Plat Book E, Page 78A;
- Plat Book E, Page 99C;
- Plat Book E, Page 99D; and
- Plat Book E, Page 100A.