

BOOK PAGE
STATE OF NORTH CAROLINA *
2201 0738 *
COUNTY OF NEW HANOVER *
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR LAND AND PROPERTY OF
ATLANTIC YACHT CLUB, INC.

THIS DECLARATION, made this 26 day of June, 1997 by Pretasky Roach Properties, LLC, a North Carolina limited liability company, hereinafter referred to as ("Declarant").

WITNESSETH:

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WHEREAS, Declarant is the owner of certain and real personal property in Wrightsville Beach Township, County of New Hanover, State of North Carolina, which real property is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, hereinafter referred to as the ("Properties");

WHEREAS, Declarant desires to impose certain restrictive and protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

WHEREAS, subsequent to this Declaration, Declarant plans to convey the Properties to ATLANTIC YACHT CLUB, INC., a North Carolina non-profit corporation, hereinafter referred to as the "Corporation," such conveyance being subject to the covenants conditions, restrictions, easements, charges and liens set forth in this Declaration that shall run with the real property;

NOW, THEREFORE, Declarant, does hereby declare that all of the property described herein, and such additions thereto as may be hereinafter made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, used, occupied and enjoyed, subject to the covenants conditions, restrictions, easements, charges and liens set forth in this Declaration that shall run with the real property and be binding on all parties owning any Membership in the Corporation, or any other right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall enure to the benefit of each owner thereof.

RETURNED TO Rountree + Seagle, LLP

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ARTICLE I

DEFINITIONS

RECORDED AND VERIFIED
MARY SUE OOTS ✓
REGISTER OF DEEDS
NEW HANOVER CO. NC
North Carolina

Section 1: "DEVELOPER" shall mean and refer to Pretasky-Roach Properties, L.L.C., a North Carolina limited liability corporation, its successors and assigns, also referred to herein as ("Declarant.")

Section 2: "CORPORATION" shall mean and refer to ATLANTIC YACHT CLUB, INC., a North Carolina Non-Profit Corporation, its successors and assigns.

Section 3: "BOARD" shall mean and refer to the Board of Directors of ATLANTIC YACHT CLUB, INC., also known as the "Board of Commanders," as lawfully constituted from time to time under the provisions of the Articles of Incorporation, this Declaration and the ByLaws. The initial Board shall serve until the first annual meeting of the Members. Thereafter, the Board shall be elected, as provided for in the ByLaws.

Section 4: "BOAT STORAGE SPACE" shall mean any of the separately numbered 158 space(s) on that plan for the dry storage of a vessel, as shown diagrammatically on Exhibit "B," attached hereto and incorporated herein by reference, in that storage facility on that certain property at Wrightsville Beach, North Carolina more particularly described in Exhibit "A."

Section 5: "MEMBERSHIP" shall mean and refer to the rights, benefits, duties and obligations, evidenced by an appropriate certificate, which inure to the benefit of and burden each person, firm or corporation owning each such membership.

Section 6: "MEMBER" shall mean and refer to the person(s) or entity(ies) owning a membership in the Corporation.

Section 7: "LICENSEE" shall mean and refer to any person or entity who secures the right to the use of a membership from a Member. All such licenses must be approved by the Board following such procedures as the Board may prescribe, which approval shall not unreasonably be withheld; and, notwithstanding any other provision of this Declaration, during all periods of any license of such membership the approved licensee shall possess, hold and use the licensed membership rights; and during such periods the *owner/licensor shall not*

have any right to the use and enjoyment of the membership, except that the owner/licensor shall retain the right to vote, pursuant to Article II, Section 2(G) below.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1: EXISTING PROPERTY. The real property that is and shall be held, transferred, sold, conveyed by Declarant to the Corporation, and to be occupied and used by the Corporation and its Members subject to this Declaration, is found in New Hanover County, North Carolina, and is more particularly described in Exhibit "A," attached hereto and incorporated by reference herein.

Section 2: ADDITIONS TO EXISTING PROPERTY

A. Additional land may be brought within this Declaration and the jurisdiction of the Corporation by Declarant, in future stages of development without the consent of the Members, if such annexations occur within thirty (30) years after the date of the filing of this instrument. After thirty (30) years, this right of annexation shall expire;

B. The additions authorized under subsection "A" above, shall be made by filing supplementary declarations of covenants, conditions and restrictions with respect to the additional properties in the office of the Register of Deeds of New Hanover County, North Carolina which shall extend this Declaration and the jurisdiction of the Corporation to such properties and, thereby, subject such properties to the benefits, agreements, restrictions and obligations set forth herein, including, but not limited to assessments as herein determined.

ARTICLE III

MEMBERS AND RIGHTS OF MEMBERSHIP

Section 1: DESIGNATION OF MEMBERSHIPS AND SPECIFIC RIGHTS OF SUCH MEMBERSHIPS.

There shall be one (1) class of membership in the Corporation, and one (1) membership shall exist for each Boat Storage Space, for a total of 158 Memberships. In addition to other Membership rights defined in

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the ByLaws of the Corporation. Each Membership shall have the right to the exclusive use and enjoyment of the numbered Boat Storage Space, corresponding with his/its/their Membership number depicted on Exhibit "B," for the sole purpose of storing a single vessel.

Subject to the exclusive rights hereby granted to each of the respective Memberships/Members, each Member of the Corporation shall have the right in common with the remaining Members of the Corporation to the use and enjoyment of the property of the Corporation, both real and personal. This right shall specifically include the Members' right to the use of that area specifically designated by the Corporation for parking, and the use of in/out and launching services provided for Members.

The rights of the Members, as provided in this Declaration and the ByLaws, shall not be amended or modified without the prior written consent of First Union National Bank of North Carolina, Declarant's lender, which consent shall not unreasonably be withheld, for so long as the debt from Pretasky Roach Properties, LLC, to First Union National Bank remains secured by the Assignment of the Right to Proceeds from the Sale of Membership Certificates, pursuant to the Assignment Agreement dated the 26 day of June, 1997, between Pretasky Roach Properties, LLC and First Union National Bank.

Section 2: LIMITATIONS ON RIGHTS OF MEMBERSHIPS: The rights of each Membership are specifically subject to the following rights of the Corporation:

- A. To limit the number of guests of Members;
- B. To require that Members comply with parking regulations published by the Board, including but not limited to the display of appropriate parking permit decal(s);
- C. In accordance with its Articles and ByLaws, to borrow money for replacing, renovating, renewing, revising, changing, or improving the corporate property and facilities;
- D. To refuse to place a vessel in the Boat Storage Space assigned to a Membership, if in the sole discretion of the Board, or its designee, the vessel's length over all exceeds the reasonable length for safe use of such Boat Storage Space.

E. Upon 10 days written notice from the Corporation to the Member, or his/her/its authorized licensee:

1. To suspend all rights of any Member/Membership for any period during which an assessment against such Membership remains unpaid; and
2. To suspend all rights of any Member/Membership for a period not to exceed thirty (30) days for an infraction of its published Rules and Regulations; and
3. To license or otherwise lawfully use all rights of any such Member/Membership during any such period of suspension; and
4. To demand the removal of the vessel occupying the Membership's Boat Storage Space forthwith; if that vessel is not removed within 10 days of the demand, then the Corporation shall have the right to remove and store the boat, all at the Membership's expense; and
5. To receive the payment of any rents or profits paid by a Licensee to the Owner(s) of any Membership.

F. To limit the access of vendors or repairmen to the facilities.

G. To dedicate any part of the corporate property to any public agency, authority or utility for such purposes, subject to such conditions as may be approved by the Members. No such dedication or transfer shall be effective unless approved by Members owning two-thirds of the Memberships and further subject to the Bylaws and Rules and Regulations of the Board of Directors.

H. Each Membership shall have one (1) vote at any meeting of Members, subject to the Bylaws of the Corporation. A Licensee, as defined hereinabove, shall not have the right to vote, that right being reserved to the owner(s) of the membership.

I. In accordance with the Bylaws of the Corporation each Membership may appoint a proxy, with full power of substitution, for and on behalf of that Membership, to attend all meetings of Members of such Corporation and to act, vote and execute consents with respect to the Memberships' rights. Any such

appointment of proxy may be revoked by the Member(s) at any time; but, if not revoked, it may only continue in full force and effect for a period of one year from the date of any such appointment.

J. For the duration of this Declaration, Developer reserves the right for itself, its successors, assigns, tenants, or licensees to the use of in/out and launching services provided by the Corporation for Members, for a monthly charge per boat storage space, not in excess of the lowest monthly Membership assessment.

Section 3: MODIFICATION OF OWNERSHIP INTEREST UPON SALE OF ADDITIONAL MEMBERSHIPS.

As and when Declarant conveys additional property to the Corporation, subjected to this Declaration as contemplated by Article II, Section 2 hereof, and upon substantial completion of improvements or Boat Storage Space(s) to be added thereon by the Declarant at its expense, the Corporation shall in consideration for the conveyance of such properties as improved, convey one new Membership to the Developer for each Boat Storage Space created on or in such real and personal properties. The additional Memberships may be conveyed by Developer, and shall be subject to this Declaration, and the Bylaws of the Corporation. Upon the creation of additional Memberships, the Interest in the Corporation of each existing Membership shall be revised, so that the total Membership interest in the Corporation shall always equal exactly one hundred percent (100%). In determining the revision of the Membership interests, the Board shall comply with the provisions set forth in the Bylaws of the Corporation, and shall publish a Revised Member's Ownership Schedule, which shall thereafter be attached to and incorporated in the Bylaws.

For so long as the debt from Pretasky Roach Properties, LLC, to First Union National Bank remains secured by the Assignment of the Right to Proceeds from the Sale of Membership Certificates, pursuant to the Assignment Agreement dated the 26 day of June, 1997, between Pretasky Roach Properties, LLC and First Union National Bank, there shall not be fewer than 158 Boat Storage Spaces and Memberships.

ARTICLE IV**COVENANT FOR ASSESSMENTS**

Section 1: CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS: Each Member agrees to pay the Corporation: all assessments and charges, assessed or levied against his/her/its Membership as provided for in the Articles, Bylaws, Rules and Regulations, or this Declaration. All such assessments, together with such interest thereon and costs of collection thereof (including reasonable attorneys fees), as hereinafter provided, shall be a charge on each Membership and shall be a continuing lien upon each Membership against which each such assessment is made as provided in Sections 9, 10 and 11 hereof. Each such assessment, together with such interest, costs and reasonable attorneys' fees (the obligations), shall also be the personal obligation of each owner of such Membership until the obligations are paid.

In any voluntary conveyance of a Membership, the purchaser(s) thereof shall be jointly and severally liable with the seller for all the obligations of seller with respect to the Membership.

Section 2: PURPOSE OF ASSESSMENTS: The assessments levied by the Corporation shall be used exclusively for the purpose of (1) promoting the recreation, health, safety and welfare of the Members and their property; (2) the enforcement of the Bylaws, these Covenants and the Rules of the Corporation promulgated by the Board of Directors; (3) payment of property taxes and other encumbrances on the properties of the Corporation; (4) the indemnification of officers and directors of the Corporation as provided in the Article and Bylaws; and (5) in particular for the following purposes:

- A. Replacement, renovation, renewal, revision, change, maintenance, or improvement of the corporate property and facilities;
- B. Operation of the lands, properties, services and facility of the Corporation related to the ownership, use and enjoyment of such properties and facilities; and
- C. Any other lawful, permitted corporate function or purpose.

Section 3: DETERMINATION OF REGULAR ASSESSMENTS. The Board shall determine the amount of regular assessments against Members as specified in the Bylaws. Regular assessments against

Members shall be determined, imposed, levied and collected by the Board. "Regular" assessments include, but are not limited to, assessments for the purpose of the replacement, maintenance and repair all property of the Corporation including the dry storage facility, and any other properties. Regular assessments may also include a working capital component to cover the cost of future renewal of properties of the Corporation. Assessments shall be payable periodically as determined by the Board, but no more frequently than monthly.

Section 4: SPECIAL ASSESSMENTS.

A. In addition to the regular assessments authorized above, the Board may levy in any fiscal year, a special assessment or assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvements upon any of the common area and the necessary fixtures and personal property related thereto, the cost to discharge any judgement, lien or other encumbrance on the properties of the corporation, or defraying in whole or in part the cost of any dredging, or defraying the expenses of operation, maintenance or renovation not adequately funded by regular assessments.

B. Except as specified herein all special assessments shall be determined, imposed, levied and collected in the manner prescribed in the ByLaws, provided that, if such special assessment exceeds ONE THOUSAND DOLLARS (\$1,000.00) in any fiscal year for any Membership, such assessment shall have the approval of the owners of a majority of the Memberships at a meeting duly constituted for this purpose, written notice of which shall have been sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting setting forth the time, date, place and purpose of the meeting.

Section 5: ASSESSMENT FOR VIOLATIONS. The Board shall have the power and authority to impose a special assessment against any Member not to exceed FIVE HUNDRED DOLLARS (\$500.00) for each occurrence, for the violation by such Member or his guest of any rule or regulation adopted and published by the Board or the breach of any ByLaw, or the breach of any provision of this DECLARATION.

Section 6: QUORUM FOR ANY ACTION AUTHORIZED UNDER § 4 (B). At any meeting called for the purpose of approving a special assessment in excess of ONE THOUSAND DOLLARS (\$1,000.00), as

provided in Article IV, Section 4(B) hereof, the presence at the meeting of Memberships or of proxies entitled to cast the votes of two thirds of the Memberships shall constitute a quorum.

Section 7: DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The regular assessments provided for herein shall commence as to each Membership on the first day of the month following its acquisition. The Board of Directors shall recommend the amount of the regular assessment against each Membership, according to its respective percentage of ownership set forth in the Bylaws, at least thirty (30) days in advance of each fiscal year. Such assessment shall be approved at the annual meeting of Members next following such recommendation. Until such approval, the recommended assessment shall be paid for each Membership, as and when it is due. Written notice of the regular assessment shall be sent to the Member(s) owning each Membership. The due dates shall be established by the Board of Directors. The Corporation shall, upon demand at any reasonable time, furnish a certificate in writing signed by an officer of the Corporation setting forth whether the assessments against a specified Membership have been paid. A reasonable charge may be made by the Board for issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8: ASSESSMENTS FOR REPAIRS OF DAMAGE CAUSED BY FAULT. If a Member, his assignee or licensee, or one of his guests, agents or other authorized user, damages or destroys by his or her fault, as determined by the Board, any of the property of the Corporation, the Corporation shall repair the damage or replace the destroyed property as soon as practicable and shall levy an individual assessment upon the owner(s) of that Membership for the full cost of repair or replacement. Notwithstanding anything else contained in these Declarations, Assessments levied under this section shall be due and payable within ten (10) days of written notice of the Assessment from the Corporation, or subject the Member to the remedies set forth in sections 9, 10, 11, and 12 herein.

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Section 9: EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE CORPORATION.

A. Any assessments, or any portions thereof, which are not paid when due shall be delinquent. Except as provided in Article IV, Section 8 above, if any assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall become a lien on such Membership and bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. Additionally, as set forth in Article IV, Section 1, Members shall be liable for any cost of collection thereof (including reasonable attorneys fees). No Member may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his Membership.

B. By his/her/its subscription to membership in the Corporation, or through any subsequent purchase of a Membership, each Member consents to and grants a security interest in his Membership, and any rents and profits derived therefrom to the Corporation as security for the payment of all assessments levied thereon.

Section 10: CREATION OF LIEN. Recognizing that proper operation and management of the facility require the continuing payment of costs and expenses therefor, and that such proper operation and maintenance result in benefit to all of the owners of Memberships, and that the payment of such common expenses represented by the assessments levied and collected by Board is necessary in order to preserve and protect the property of the owners of Memberships, the Corporation is hereby granted a security interest ("Lien") upon each Membership, which Lien shall secure and does secure the monies due for all assessments now or hereafter levied against the owner of each Membership which Lien shall also secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Corporation, and which Lien shall also secure all costs and expenses, including reasonable attorney's fees, which may be incurred by the Corporation in securing the payment of such assessment or enforcing this Lien upon the Membership. The Lien granted to the Corporation may be foreclosed or otherwise enforced the Lien in the manner provided by North Carolina General Statutes, Chapter 25, Article 9, Part 5. In any suit for the foreclosure of that Lien, the

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Member hereby consents to, and the Corporation shall be entitled to the appointment of a receiver for that Membership. Further, the Corporation shall be entitled to maintain an action for specific performance, to cause the Member to deliver his/her/its Membership Certificate to the appointed receiver. The Lien granted to the Corporation shall further secure such advances for taxes, and payments on account of superior mortgages, Liens, or encumbrances which may be required to be advanced by the Corporation in order to preserve and protect its Lien, and the Corporation shall further be entitled to interest at the rate prescribed above on any such advances made for such purpose. All persons, firms, or corporations who shall acquire, by whatever means, any interest in the ownership of any Membership, or who may be given or acquire a mortgage, lien, or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Corporation, and shall acquire such interest in any unit expressly subject to such lien rights. Notwithstanding any of the foregoing, for so long as the debt from Pretasky Roach Properties, LLC, to First Union National Bank remains secured by the Assignment of the Right to Proceeds from the Sale of Membership Certificates, pursuant to the Assignment Agreement dated the 26 day of June, 1997, between Pretasky Roach Properties, LLC and First Union National Bank, any lien under this section shall be subordinate to the lien of First Union National Bank on those Membership certificates covered by the above described Assignment Agreement.

Section 11: NOTICE OF DEFAULT AND FORECLOSURE. The Lien herein granted unto the Corporation shall be enforceable from and after the time of providing written notice to the Member(s), which notice shall describe the Membership encumbered thereby, the name of the record owner(s), the amount due and the date when due. Foreclosure on such Liens shall include only assessments which are due and payable when the notice is provided to the Member(s), plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such notice shall be signed and verified by an officer or agent of the Corporation. The Lien provided for herein shall be subordinate to the lien of any first mortgage or pledge, and any person, firm or corporation acquiring title to any Membership by virtue of any foreclosure, transfer in lieu of foreclosure or judicial sale, shall be liable and obligated only for assessments as shall accrue and become due and payable thereafter. After satisfaction of the lawful claims of such first mortgagee/pledgee, the net proceeds from such foreclosure sale or private sale shall first be applied to the payment of the Lien of the Corporation, and the balance of such sale proceeds shall then be delivered to the owner(s) of the Membership which was subjected to the foreclosure or private sale in lieu of foreclosure. In the event of the acquisition of a Membership by foreclosure, transfer in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring the Membership shall not be liable shall be

absorbed and paid by all owners of all Memberships as a part of the common expenses, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

Section 12: LIEN NOT EXCLUSIVE REMEDY. Whenever any Membership may be licensed, sold or mortgaged by the owner thereof, the Corporation, upon written request of the Member(s) shall furnish to the proposed licensee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Corporation by such Membership. Such statement shall be signed by any officer of the Corporation and any licensee, purchaser, or mortgagee may rely upon such statement in concluding the proposed license, purchase, or mortgage transaction; and the Corporation shall be bound by such statement.

In any voluntary conveyance of a Membership, the purchaser thereof shall be jointly and severally liable with the seller for all unpaid obligations against seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the purchaser to recover from seller the amounts paid by purchaser therefor.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment, attorneys' fees, interest and costs shall not be deemed to be an election by the Corporation which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sums then remaining owing to the Corporation.

ARTICLE V

MAINTENANCE

Section 1: EXISTING PROPERTIES. The Corporation shall provide maintenance of all of its properties, including any charge from the Developer for maintenance dredging of the submerged lands of the

Developer's pier facility, all as determined reasonably necessary by the board for the maintenance and operation of Atlantic Yacht Club, Inc. in a *Shipshape and Bristol Fashion*. The cost of such maintenance shall be added to and become a part of the total, annual assessment for which all Memberships are liable as specified herein and in the ByLaws.

Section 2: DEVELOPER'S PIER FACILITIES. The Developer shall maintain its properties, including any maintenance dredging of the submerged lands of the Developer's pier facility, all as determined reasonably necessary by the Board for the operation, use and enjoyment of the Corporation, and its Members. This maintenance shall include necessary replacement, renovation, renewal, or revision reasonably necessary for the use and enjoyment of the Existing Properties of the Corporation, and the benefits of Membership in the Corporation. A portion of the cost of such maintenance shall be chargeable to the Corporation, and included in the cost of maintenance, which from time to time may be assessed against the Memberships pursuant to Article IV, Section 4 hereinabove.

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, wall, sign, box or other attachment or structure shall be commenced, stored, erected or maintained by any Member upon the property of the Corporation.

The Developer, has the exclusive right to control the erection of any building, fence, wall, sign, or structure upon the Existing Property. The Corporation shall not erect, place or alter any building, fence, wall or other structure on the Existing Property, nor shall the grade or elevation or physical characteristics of the Existing Property, or portion thereof, be altered in any way whatsoever, until the proposed building plans, specifications, exterior design, colors, finishes and materials, and site and grading plan (which must show the proposed location of all buildings, driveways, parking areas and proposed alterations to the grade, elevation or physical characteristics of the site), and the construction schedule have been approved in writing by the Developer. Refusal or approval of any such plan, location or specification may be based by Developer upon any ground, including purely aesthetic and environmental considerations, as in the sole and uncontrolled discretion of the Developer seem sufficient. The Developer shall not be responsible for any structural or other

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defects in plans or specifications submitted to it in any structure erected according to such plans and specifications. After the building plans and specifications have been approved by the Developer no changes or deviations in or from such plans or specifications as approved shall be made without the written consent of the Developer. No alterations in the exterior appearance of any building or structure or in the grade elevation, or physical characteristics, of any Lot shall be made without the prior approval of the Developer.

In addition to the above described Architectural Control, the Developer, its successors, or assigns shall have the right to erect signage upon the Existing Property.

ARTICLE VII

USE RESTRICTIONS

Section 1: RULES AND REGULATIONS. Subject to the provisions of the Articles of Incorporation, the Bylaws, and this Declaration, the Board of Directors of the Corporation shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of all the property of the Corporation. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors shall be recorded in a Minute Book or Book of Resolutions, which shall be maintained at a place convenient to the Members and available to them for inspection and copying at such Member's expense during normal business hours.

Section 2: QUIET ENJOYMENT. No obnoxious or offensive activity shall be carried on in or upon the property of the Corporation, nor shall anything be done which may be or may become a public or private nuisance as determined by the law of North Carolina. No loitering shall be permitted upon the properties of the Corporation, or the Developer's pier facility.

Section 3: NEGATIVE PLEDGE. The Corporation shall not sell, lease, exchange, assign, convey, transfer or dispose of, or create, place or permit to be created or placed, any mortgage, deed of trust, pledge or encumbrance, upon all or any portion of the real and personal property owned by the corporation for so long

as the debt from Pretasky Rosch Properties, LLC, to First Union National Bank remains secured by the Assignment of the Right to Proceeds from the Sale of Membership Certificates, pursuant to the Assignment Agreement dated the 26 day of June, 1997, between Pretasky Rosch Properties, LLC and First Union National Bank. Notwithstanding any of the foregoing, if the corporation becomes the owner of a Membership through the provisions of Article IV, Section 11 herein above, the provisions of this section, i.e., Article VII, Section 3, shall not apply to the subsequent conveyance of that Membership.

ARTICLE VII

EASEMENTS

Section 1. EASEMENTS OF RECORD. All of the property of the Corporation shall be subject to such easements for ingress, egress, driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, footings, gas lines, telephone, cablevision and electric power lines and other public utilities as are of record in the New Hanover County Registry, prior to the recording of this Declaration; and the Board shall have the power and authority to grant and establish upon, over and under and across all of its properties as described such further easements as are requisite for the convenient use and enjoyment of such properties, provided the same do not unreasonably interfere with the reasonable use of the properties of the Corporation by its Members.

Section 2. ACCESS EASEMENT FOR MEMBERS. All of that property of the Developer, more particularly described as Tracts "A" and "C" respectively, on exhibit "A" attached hereto, shall be subject to a non-exclusive easement for pedestrian ingress and egress from the Corporation's Existing Property, for the convenient use and enjoyment of the Existing Properties of the Corporation by its Members, provided the same do not unreasonably interfere with the reasonable use of the properties of the Developer.

Section 3. EASEMENT FOR MEMBERS' OVERFLOW PARKING. All of that property of the Developer, more particularly described as Tract "C" on exhibit "A" attached hereto, shall be subject to a non-exclusive easement for ingress and egress for overflow parking, (i.e., when parking facilities of the Existing Properties are filled to capacity), for the convenient use and enjoyment of the Existing Properties of the Corporation by its Members, provided the same do not unreasonably interfere with the reasonable use of the