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NEW HANOVER CO., N.C.

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
BRADLEY CREEK BOATOMINIUM, INC.

A NONPROFIT CORPORATION

INDEX

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ARTICLE I - DEFINITIONS

Section 1 - Corporation.....	1
Section 2 - Board.....	2
Section 3 - Common Area.....	2
Section 4 - Boat Slip.....	2
Section 5 - Dry Storage Space.....	2
Section 6 - Membership.....	2
Section 7 - Charter Membership.....	2
Section 8 - Member.....	2
Section 9 - Charter Member.....	2
Section 10 - Lessee.....	3

ARTICLE II - ANNEXATION OF ADDITIONAL PROPERTIES..... 3

ARTICLE III - MEMBERS AND RIGHTS OF MEMBERSHIP

Section 1 - Charter Members - Eligibility and Application.....	3- 4
Section 2 - Classes of Members and Memberships....	4
Section 3 - Members' Rights.....	4- 5

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1 - Creation of the Lien and Personal Obligation of Assessments.....	5- 6
Section 2 - Purpose of Assessments.....	6
Section 3 - Determination of Regular Assessments.	6
Section 4 - Special Assessments.....	7
Section 5 - Quorum for any Action Authorized Under Sections 3 and 4.....	7
Section 6 - Date of Commencement of Annual Assessments.....	7- 8
Section 7 - Assessments for Repairs of Damage Caused by Fault.....	8
Section 8 - Effect of Nonpayment of Assessments. Remedies of the Corporation.....	8
Section 9 - Subordination of the Lien to Mortgages.....	9



STATE OF NORTH CAROLINA \*  
 COUNTY OF NEW HANOVER \*

DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS FOR  
 BRADLEY CREEK BOATOMINIUM, INC.,  
 A NONPROFIT CORPORATION

THIS DECLARATION, made on the date hereinafter set forth by BRADLEY CREEK BOATOMINIUM, INC., hereinafter referred to as "DECLARANT."

W I T N E S S E T H:

WHEREAS, the corporation is the owner of certain real and personal property in Harnett Township, County of New Hanover, State of North Carolina, which is more particularly described in Exhibit "A" attached hereto; and

WHEREAS, the corporation desires to impose certain restrictive and protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth:

NOW, THEREFORE, the corporation hereby declares that all of the properties as described in Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of such property. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each member of the corporation.

ARTICLE I

DEFINITIONS

Section 1: "CORPORATION" shall mean and refer to BRADLEY CREEK BOATOMINIUM, INC., a North Carolina corporation, its successors and assigns.

Section 2: "BOARD" shall mean and refer to the Board of Directors of BRADLEY CREEK BOATOMINIUM, INC. as lawfully constituted from time to time under the provisions of the Articles of Incorporation, this Declaration and the By-Laws.

Section 3: "COMMON AREA" shall mean all real and personal property owned by the corporation.

Section 4: "BOAT SLIP" shall mean the space in and above the water adjacent to Bradley Creek, New Hanover County, North Carolina, for the docking of a boat as shown diagrammatically on Exhibit "A" attached hereto and incorporated herein by reference, and all such slips exist or will exist by virtue of a valid permit from the United States Army Corps of Engineers for their creation and use.

Section 5: "DRY STORAGE SPACE" shall mean the space above the land of the corporation as shown diagrammatically on Exhibit "A" attached for the elevated storage of a boat out of the water.

Section 6: "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 member of the corporation.

Section 7: "CHARTER MEMBERSHIP" shall mean and refer to the first membership issued by the corporation entitling its holder to the exclusive use of a boatslip or a dry storage space shown on Exhibit "A" together with all other rights, benefits, duties and obligations, evidenced by an appropriate certificate, which inure to the benefit of and burden each member of the corporation.

Section 8: "MEMBER" shall mean and refer to every person or entity who has a membership in the corporation.

Section 9: "CHARTER MEMBER" shall mean and refer to every person or entity who is issued and holds a Charter Membership in the corporation.

Section 10: "LESSEE" shall mean and refer to any person or entity who leases a membership from a member. All such leases must be approved by the Board of Directors following such procedures as it may prescribe; and, notwithstanding any other provision of this Declaration, during all periods of any lease of such membership the approved lessee shall possess, hold and use all of the leased membership rights; and during such periods the member-lessor shall have no right to the use and enjoyment of his membership, except that the member only may vote at any meeting of members for any purpose on any matter.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Annexation of additional property outside the boundary shown on the general plat attached hereto as Exhibit "A" shall require the assent of two-thirds (2/3) of the members, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the time, date, place and purpose of the meeting. A quorum shall be fifty (50%) percent of the members of the corporation. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

ARTICLE III

MEMBERS AND RIGHTS OF MEMBERSHIP

Section 1: CHARTER MEMBERS -- ELIGIBILITY AND APPLICATION. Any person, firm or entity is eligible to

apply for charter membership by subscription to the incorporator and payment of the sum specified by the incorporator, provided that the incorporator shall have the sole authority to accept or reject such subscription for any reason. No transfer or assignment of any interest in a subscription for membership can be made without the express, prior written approval of the incorporator.

At the first meeting of the Directors, the Board shall approve the subscriptions accepted by the incorporator and direct the proper officers of the corporation to issue an appropriate certificate of charter membership to each such subscriber. Thereafter the Board shall promptly follow the same procedure for approving subscriptions for all charter memberships. Thereafter there shall be no transfer, assignment, pledge or lease of any interest in any membership without the approval of the Board of Directors following such procedure as may be prescribed in the By-Laws.

Section 2: CLASSES OF MEMBERS AND MEMBERSHIPS.

There shall be two (2) classes of members and memberships -- Class "S" composed of all members, each of whom has the exclusive right to the use of a boat slip, and Class "DS" composed of all members, each of whom has the exclusive right to the use of a dry storage space. There shall be no restriction on the number of classes of memberships which can be held by any person, firm or entity. Each Class "S" membership shall be held by a Class "S" member and shall include the right to select the boat slip of his choice on Piers 1 through 6 of the Boatominium facility, not previously selected by another accepted subscriber. Each Class "DS" membership shall be held by a Class "DS" member and shall include the right to select the dry storage space of his choice in the dry storage areas of the Boatominium facility not previously selected by another accepted subscriber.

Section 3: MEMBERS' RIGHTS.

A. Each member of each class shall have the ex-

clusive right, subject to the provisions hereof and the By-Laws and Rules and Regulations of the Board of Directors, to occupy, possess and lawfully use the boat slip or dry storage space selected by such member in his accepted subscription for membership.

B. Each member of each class shall have a right and easement of enjoyment in and to the common area subject to the right of the corporation:

1. To promote and regulate the use and enjoyment of such area for the benefit of the members and their lessees.

2. In accordance with its Articles and By-Laws, to borrow money for the purpose of improving the properties, common area and facilities;

3. To suspend all rights of any member for any period during which any assessment against such member remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published Rules and Regulations; and to lease or otherwise lawfully use all rights of any such member during any such period of suspension.

4. To dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless approved by two-thirds (2/3) of the members and further subject to the By-Laws and Rules and Regulations of the Board of Directors.

C. Each owner of each membership in each class shall have one (1) vote at any meeting of members, subject to the By-Laws of the corporation.

#### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS: Each owner of each membership agrees to pay the corporation: (1) annual assessments or

charges and (2) special assessments as described hereinafter, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the membership and shall be a continuing lien upon the membership against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such membership at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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 these covenants and the Rules of the corporation promulgated by the Board of Directors; and (3) in particular for the improvement and maintenance of the properties, services and dock and dry storage facilities devoted to this purpose and related to the use and enjoyment of the Common Area.

Section 3: DETERMINATION OF REGULAR ASSESSMENTS.

A. The Board shall determine the amount of regular assessments against members as specified in the By-Laws. Regular assessments against members shall be determined, imposed, levied and collected by the Board in the manner prescribed in the By-Laws.

B. The Board is specifically empowered on behalf of the corporation to make and collect regular assessments and to replace, maintain, and repair all property of the corporation including the bulkheads, docks, piers, pilings, and dry storage facilities. Assessments shall be payable periodically as determined by the Board.

Section 4: SPECIAL ASSESSMENTS. In addition to the annual assessments authorized above, the corporation may levy in any fiscal year, a special assessment 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 a described capital improvement upon any of the common area and the necessary fixtures and personal property related thereto, 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. Except as specified herein, all special assessments shall be determined, imposed, levied, and collected in the manner prescribed in the By-Laws provided that, if such special assessment exceeds ONE HUNDRED (\$100.00) DOLLARS in any fiscal year for any member, such assessment shall have the approval of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting setting forth the time, date, place and purpose of the meeting.

Section 5: QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty (60%) percent of all the votes shall constitute a quorum.

Section 6: DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. DUE DATES: The annual assessments provided for herein shall commence as to each membership on the first day of the month following its acquisition by a member. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each membership at least thirty (30) days in advance of each annual assessment period. Written notice of the

annual assessment shall be sent to every member. 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 the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7: ASSESSMENTS FOR REPAIRS OF DAMAGE CAUSED BY FAULT. If a member, assignee or lessee, or one of his guests, damages or destroys by his or her fault any of the property of the corporation including the bulkheads, piers, docks, boat slips, dry storage sheds and other facilities, the corporation shall repair the damage or replace the destroyed property as soon as practicable and shall levy an individual assessment upon the owner of that membership for the full cost of repair or replacement.

Section 8: EFFECT OF NONPAYMENT OF ASSESSMENTS. REMEDIES OF THE CORPORATION. Any assessments or any portions thereof which are not paid when due shall be delinquent. If the 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 highest lawful rate per annum, and the corporation may bring an action at law against the member personally obligated to pay the same or may foreclose the lien against the membership and sell the same, after ten (10) days notice to such member at his last known address, and the interest, reasonable attorneys' fees and costs of any such action shall be added to the amount otherwise due, all of which shall be part of the lien. No member may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his membership.

Section 9: SUBORDINATION OF THE LIEN TO MORTGAGES.

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or pledge of the membership. An attempted sale or transfer of any membership shall not affect the assessment lien, and the membership shall neither be transferred on the books of the corporation nor shall a new certificate of membership be issued by the corporation until the lien is satisfied. However, the sale or transfer of any membership subject to any mortgage or pledge, pursuant to a decree of foreclosure under such mortgage or pledge or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereon which become due prior to such sale or transfer. No sale or transfer shall relieve such member from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VMAINTENANCE

The corporation shall provide maintenance of all of its properties including bulkheads, docks, piers, dry storage sheds and pilings as well as maintenance dredging of the submerged lands of the marina facility. 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 By-Laws.

ARTICLE VIARCHITECTURAL CONTROL

No building, fence, wall, sign or other structure shall be commenced, stored, erected or maintained upon the Common Area or other property of the corporation, nor shall any addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of such change shall

have been submitted to and approved in writing by the Board of Directors or by an architectural committee composed of three (3) or more representatives of the Board.

DOCK BOXES. For each boatslip there shall be no more than two (2) dock boxes of such size, design and construction and in such location as the Board of Directors shall determine. No removal of any dock box or change in its location, size, design or construction shall be made without the written consent of the Board of Directors; provided, that any such approved removal or change shall be at the expense of the person seeking such removal or change.

#### ARTICLE VII

##### USE RESTRICTIONS

Section 1: RULES AND REGULATIONS. Subject to the provisions of the Articles of Incorporation 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, including boatslips, docks, piers, pilings and dry storage sheds, Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors shall be recorded in a Book of Resolutions, which shall be maintained at a place convenient to the members and available to them for inspection during normal business hours.

Section 2: USE OF PROPERTIES, ETC. No portion of the property of the corporation, including boatslips, docks, piers, pilings and dry storage facilities may be used for any commercial purpose without the prior, written approval of the Board of Directors.

Section 3: QUIET ENJOYMENT. No obnoxious or offensive activity shall be carried on in or upon the property of the corporation, including boatslips, docks, piers, pilings and dry storage facilities, nor shall anything be done which may be or may become a nuisance or annoyance

to any member, assignee, or lessee.

ARTICLE VIII

EASEMENTS

All of the property of the corporation shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, footings, air condition compressors, 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 corporation 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.

ARTICLE IX

GENERAL PROVISIONS

Section 1: ENFORCEMENT. The corporation 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 or under the provisions of this Declaration. Failure of the corporation to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3: AMENDMENT. The covenants, conditions and restrictions of this Declaration shall run with and bind all of the property of the corporation insofar as the law

permits and shall inure to the benefit of and be enforceable by the corporation, subject to this Declaration, its successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time such covenants shall be automatically extended for successive periods of ten (10) years each. The covenants, conditions and restrictions of this Declaration may be amended during the first twenty (20) year period upon the approval of not less than seventy-five (75%) percent of the members, and thereafter by not less than sixty (60%) percent of the members.

Section 4: CERTIFYING AND RECORDING AMENDMENT.

If any amendment to these covenants, conditions and restrictions is executed, each such amendment shall be delivered to the Board of Directors of the corporation. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

A. Reasonably assure itself that the amendment has been executed according to the authority of the required number of members. For this purpose, the Board may rely on its roster of members and shall not be required to resort to any other source.

B. Attach to the amendment a certification as to its validity, which certification shall be executed by the corporation in the same manner that deeds are executed. The following form of certification is suggested:

"CERTIFICATION OF VALIDITY OF AMENDMENT  
TO COVENANTS, CONDITIONS AND RESTRICTIONS  
OF BRADLEY CREEK BOATOMINIUM, INC.

By authority of its Board of Directors,  
BRADLEY CREEK BOATOMINIUM, INC. certifies that  
the foregoing instrument has been duly authorized  
and approved by \_\_\_\_\_ percent of  
the members of BRADLEY CREEK BOATOMINIUM, INC.  
and is, therefore, a valid amendment to the existing  
covenants, conditions and restrictions of BRADLEY