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RECORDED AND INDEXED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
REGISTER OF DEEDS
NEW HANOVER COUNTY, N.C.
CREEKSIDE YACHT CLUB

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 30th day of September, 1999, by BOATHOUSE DEVELOPMENT CORPORATION, a North Carolina corporation, hereinafter referred to as "Declarant."

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STATEMENT OF PURPOSE

Declarant is the owner of certain property in New Hanover County, North Carolina which is more particularly described on a map recorded in Map Book 39, Page 139, in the office of the Register of Deeds of New Hanover County, North Carolina, reference to which is hereby made. Declarant desires to create thereon a private yacht club, to be named Creekside Yacht Club, with a marina, dry stack storage facilities and clubhouse.

Declarant desires to insure the attractiveness of Creekside Yacht Club and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all property within Creekside Yacht Club and to provide for the maintenance and upkeep of all common areas in Creekside Yacht Club. To this end the Declarant desires to subject the property described herein, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

Declarant further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities in Creekside Yacht Club, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created in order to efficiently

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preserve, protect and enhance the values and amenities in Creekside Yacht Club, to insure the members' enjoyment of the specific rights, privileges and easements in the common area, and to provide for the maintenance and upkeep of the common area. Declarant has or will cause to be incorporated under North Carolina law, Creekside Yacht Club, Inc., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions and Restrictions, does declare that all of the property described herein, and such additions thereto as may be hereafter made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title or interest in such real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Creekside Yacht Club, Inc., a North Carolina non-profit corporation, its successors and assigns

Section 2. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

Section 3. "Boat Slip" shall mean and refer to a dry storage Boat Slip, referring to a designated storage space for the storage of a pleasure boat or craft within the dry stack storage buildings, as shown on the Map

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association attached to and recorded with this Declaration as **Exhibit "A"**, as the same may be amended from time to time.

Section 5. "Charter Member" shall mean and refer to Boathouse Development Corporation, a North Carolina corporation.

Section 6. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the members of the Association. The Common Area to be owned by the Association will include the dry stack storage buildings, the Marina Facility, clubhouse, private streets and roads, and other areas as may be marked on the Map.

Section 7. "Declarant" shall mean and refer to Boathouse Development Corporation, a North Carolina Corporation, and also shall mean and refer to any person, firm or corporation which shall be a successor or assign of Boathouse Development Corporation and also be designated as a Declarant by Boathouse Development Corporation.

Section 8. "Map" shall mean and refer to the map of the Existing Property (as defined in Article II, Section 1 hereof) as recorded in Map Book 39, Page 139, in the New Hanover County Registry and the maps of any additions to the Existing Property which may be recorded by Declarant in the New Hanover County Public Registry hereafter.

Section 9. "Marina" or "Marina Facility" shall mean and refer to that certain facility, including all pilings, piers, docks, and appurtenances thereto, for the docking of pleasure boats and crafts, located or to be located in the navigable waters of Bradley Creek immediately adjacent to that high land comprising the Existing Property as shown on the Map.

Section 10. "Member" shall mean and refer to every person or entity who holds membership in the Association, whether by gift, purchase, foreclosure or the exercise of rights as a secured creditor or pledgee or transfer in lieu thereof.

Section 11. "Property" or "Properties" shall mean and refer to the "Existing Property" described in Article II, Section 1 hereof, and such additions thereto as may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association.

Section 12. "Yacht Club" shall mean and refer to Creekside Yacht Club, with dry stack storage buildings, Marina, and clubhouse as shown on the Map, and may include future development of Boat Slips, additional boat storage buildings and appurtenant facilities.

ARTICLE II

**PROPERTY SUBJECT TO THIS DECLARATION AND
WITHIN THE JURISDICTION OF
CREEKSIDE YACHT CLUB, INC.**

Section 1. Existing Property. The property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association is located in New Hanover County, North Carolina, and is more particularly described on the Map. Declarant shall not modify or recombine Boat Slips in such a fashion as shall reduce the total number of boat slips to less than three hundred fifty (350)

Section 2. Additions to Existing Property

(a) Additional property which is contiguous to the Existing Property or any land previously added to the Existing Property may be brought within the scheme of this Declaration and the jurisdiction of the Association by Declarant, in future stages of development, with the consent and approval of either a majority of the Members or the Board of Directors (by a simple majority vote), provided that such annexations occur within five (5) years after the date of the filing of this instrument.

(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 New Hanover County Registry which shall extend the scheme of this Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein, including, but not limited to, assessments as herein determined. Provided, however, that the Declarant specifically reserves the right to amend or modify any portion or portions of these covenants, conditions, and restrictions as the same may be made applicable to such additional properties.

ARTICLE III

DISCLOSURES AND DISCLAIMERS BY DECLARANT

Section 1. Status of Marina Facility. The Marina Facility is located upon navigable waters and exists solely in accordance with the terms of such permits as have been issued, and remain in effect, by agencies of the United States of America and the State of North Carolina. All rights in and to said Marina Facility and all improvements related thereto are subject to the terms and conditions of such permits, compliance with such terms and conditions, and the continued existence, effectiveness, and renewal (if required) of such permits. In accordance with state regulations and permits, the Marina Facility is a “closed-head”, “non live-aboard” marina. Each Member, by acceptance of membership, acknowledges these disclosures by Declarant and agrees to accept membership subject thereto.

ARTICLE IV

MEMBERS AND RIGHTS OF MEMBERSHIP

Section 1. Classes of Membership. There shall be two (2) classes of members and memberships: Charter and Class A which shall be considered the personal property of the respective members. The various rights and characteristics of said classes of membership shall be as set forth below in the Article.

Section 2. Charter Membership. In consideration for the establishment of the Yacht Club, the Association shall issue and assign to the Charter Member the Charter Membership rights for each and every membership in the Association. Said Charter Memberships shall be freely transferable by the Charter Member without any application or approval. Upon transfer of any such Charter Membership by the Charter Member to another person, partnership, corporation, or other entity, such membership shall immediately cease to be a Charter Membership and shall automatically convert to a Class A membership. Further, the Charter Membership shall have the right, as its sole option, to convert any Charter Membership to a Class A Membership at any time upon notice to the Association.

Section 3. Class A Membership. Each Class A membership shall entitle such Member to the exclusive use and enjoyment of one (1) particular Boat Slip as identified on the membership certificate. Each Class A Member shall have the exclusive right, subject to the provisions hereof and the provisions of the Bylaws and Rules and Regulations issued pursuant hereto, to occupy, possess and lawfully use that particular Boat Slip identified on such membership certificate. Each Class A Member shall also have those common area rights and voting rights set forth below in this Article.

Section 4. Common Area Rights. Each Member shall have a non-exclusive right of easement of enjoyment in and to the common areas, subject to the right of the Association:

1. To assign particular Class A Members the right to the exclusive use and enjoyment of Boat Slips;
2. To limit the number of guests of members;

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

4. To suspend all rights of any Member for any period during which an assessment against such Member remains unpaid or, for a period not to exceed sixty (60) days, for an infraction of its published Rules and Regulations; and to license or otherwise lawfully use all rights of any such Member during any such period of suspension; and

5. To grant such utility easements and rights of way over the Common Area, or portions thereof, to either a public or private utility as may be necessary to facilitate the provision of utility service to the Yacht Club.

6. 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 the consent of the membership based upon an affirmative vote of two-thirds (2/3) of the total votes eligible to be cast.

Section 5. Voting Rights. Except as specifically provided in the Bylaws, the voting rights of the Members at any meeting of Members shall be as follows:

- (a) Each Class A membership shall have one (1) vote; and
- (b) Each Charter membership shall have one (1) vote.

Section 6. Transfer of Membership. Any and all Charter memberships may be sold, transferred, assigned, pledged, licensed or leased by Declarant without limitation, and without the requirement of any approval or waiver of right of first refusal. As to Class A memberships, any sale of any such membership, or any interest therein, shall be subject to a right of first refusal in favor of the Association as set forth in Section 7 of this Article IV. Any other transfer, assignment, pledge, license or lease of a Class A membership, or any interest therein, except as it relates to the perfection

of a security interest therein, or the pledge or mortgage thereof, in favor of a bank, lending institution or corporation the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC), shall require the prior approval of the Board of Directors, following such procedure as may be prescribed in the By-laws.

Section 7. Right of First Refusal

(a) Each Class A Member acknowledges, and the membership certificate issued to each Class A Member may provide, that the Association shall retain a right of first refusal and option to repurchase any Class A Membership within the Yacht Club on the terms and conditions set forth below. This Section shall not restrict a Class A Member's right to enter into a binding contract for the sale of a Membership, provided that, for so long as this right of first refusal exists, the contract provides that the Class A Member may not convey the Membership to any third party without giving the Association the right of first refusal on the terms and conditions set forth below. This right of first refusal shall not apply to any transfer or conveyance in connection with a mortgage foreclosure or enforcement proceeding relating to a pledge of a Membership, or to a transfer in lieu of such foreclosure or enforcement proceeding.

(b) If any Class A Member desires to convey a Membership to a third party, the Class A Member proposing to transfer said Membership shall deliver to the Association within seven days of its execution a copy of the executed, binding sales contract between the Class A Member and the prospective purchaser. The sales contract shall provide that Association shall have 30 days after actual receipt of the executed binding contract upon which to exercise its right of first refusal and option to purchase the Membership on the same terms and conditions as the sales contract between the Class A Member and prospective purchaser. The Association shall provide written notice of the

exercise of the right of first refusal to the selling Class A Member. If the Association fails to exercise such right as provided herein, the right of first refusal shall be waived and extinguished. Upon request and receipt of a release in form and content satisfactory to the Association, Declarant shall execute a release of such right of first refusal if the Association does not intend to exercise such right.

(c) If the Association exercises its right of first refusal, the Class A Member shall transfer the Membership (free and clear of all liens and encumbrances) to the Association, in accordance with the terms of the sales contract, within 30 days after the date of receipt of the Declarant's notice that the right of first refusal has been exercised.

(d) If the Association does not exercise its right of first refusal, the selling Class A Member shall give the Board written notice of the name and address of the purchaser or transferee, the date of the transfer of the Membership, and such other information as the Board may reasonably require not later than the date of closing. The selling Class A Member shall continue to be jointly and severally responsible with the purchaser or transferee for all obligations related to the Membership, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of the Membership.

(e) This right of first refusal shall automatically terminate as to all Class A Memberships twenty one (21) years from the date that this Declaration is recorded in the New Hanover County Registry, or sooner if the Association, in its sole discretion, so determines and declares in a recorded instrument.

PROPERTY RIGHTS

Section 1. Ownership of Common Areas. Declarant shall convey the Common Area to the Association at such time as all amenities have been constructed and completed. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Area (including the Common Area streets and roads) shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

Section 2. Delegation of Use. Any Member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the Members of his family, his guests, his tenants, or contract purchasers

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

(a) Each owner of each membership, excepting all Charter Memberships, agrees to pay the Association:

(1) regular assessments, (2) special assessments, (3) assessments for violations of this DECLARATION, the BY-LAWS, or RULES AND REGULATIONS, and (4) assessments for repairs of damage caused by fault as provided in Article VI, Section 8, hereof, such assessments to be fixed, established and collected from time to time as hereinafter provided. All such 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

attorney's fees, shall also be the personal obligation of the person who was the owner of such membership at the time the assessment fell due. Their personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by such successor.

(b) Due to the expenditure of funds for the costs of operations, the Charter Member shall be exempt from all assessments until January 1, 2001. Beginning on January 1, 2001 the Charter Member shall pay assessments only on those Charter Memberships which are rented to third parties. Such assessments on rented Charter Memberships shall be payable only during the term of any such rental, to be prorated based upon the beginning and ending dates of such term.

Section 2. Purpose of Assessments The assessments levied by the Association shall be used as follows:

(a) to maintain all private roads constructed within the Common Area to the standard of maintenance which would be required by the State of North Carolina before it would accept such roads for maintenance, provided that this provision does not require that the width of the road rights-of-way be the width required before such roads would be accepted by the State of North Carolina for maintenance;

(b) to maintain the Marina Facility and all pilings and piers, and to keep the drainage easements free of pollution and natural debris;

(c) to keep the clubhouse and all amenities in the Common Areas clean and free from debris and to maintain all amenities in an orderly condition, and to maintain the landscaping therein in accordance with the highest standards for private residential communities in New Hanover County, North Carolina, including any necessary removal and replacement of landscaping;

(d) to provide such security services as may be deemed reasonably necessary for the

protection of the Common Area from theft, vandalism, fire and damage from animals;

(e) to provide garbage removal services for the Common Area, including the Marina Facility;

(f) to pay all ad valorem taxes levied against the Common Area and any property owned by the Association;

(g) to pay the premiums on all hazard insurance carried by the Association on the Common Area, and all public liability insurance carried by the Association pursuant to the Bylaws;

(h) to enforce this Declaration and Rules and the Rules and Regulations of the Corporation;

(i) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws; and

(j) to accumulate and subsequently maintain a contingency reserve equal to ten percent (10%) of the sum of the amounts described in subsections (a) through (i) above in order to fund unanticipated expenses of the Association.

Section 3. Determination of Regular Assessments.

A. The Board of Directors shall determine the amount of regular assessments against Members in the manner specified in the Bylaws. Regular assessments against Members shall be determined, imposed, levied and collected by the Board.

B. The Board is specifically empowered on behalf of the Association to make and collect regular assessments and to replace, maintain and repair all property of the Association, including the private roads, clubhouse, dry stack storage facility, bulkheads, docks, piers, pilings, and other facilities. Assessments shall be payable periodically as determined by the Board, but no more frequently than monthly.

Section 4. Special Assessments. 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, 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 Bylaws, provided that, if such special assessment exceeds ONE THOUSAND DOLLARS (\$1,000.00) in any fiscal year for any membership, such assessment shall require the approval of a majority of the votes eligible to be cast 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. For the violation by a Member or his guests of any Rule or Regulation adopted by the Board or the breach of any Bylaw, or the breach of any provision of the DECLARATION, 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.

Section 6. Quorum For Any Action. At the first meeting called, the presence at the meeting of memberships or of proxies entitled to cast sixty percent (60%) of all the votes in the Association 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 from the Charter Member by some other person, partnership, corporation

or other entity. No assessment shall be levied or charged against any Charter Membership, except as provided in Article VI, Section 1(b) hereinabove. The Board of Directors shall fix the amount of the regular assessment against each membership at least thirty (30) days in advance of each fiscal year. Written notice of the regular assessment shall be sent to the Members(s) owning each membership. The due dates shall be established by the Board of Directors. The Association shall, upon demand at any reasonable time, furnish a certificate in writing signed by an officer of the Association 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, damages or destroys by his or her fault, as determined by the Board, any of the property of the Association, including the private roads, clubhouse, landscaping, dry stack storage facilities, bulkheads, piers, docks and other facilities, the Association 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.

Section 9. Effect of Non-Payment of Assessments. Remedies of the Association. 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 rate of eighteen percent (18%) per annum. No Member may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his membership.

Section 10. Creation of Lien. Recognizing that proper operation and management of the Common Areas require the continuing payment of costs and expenses therefore, and that such proper operation and maintenance results in benefit to all Members, and that the payment of such common expenses represented by the assessments levied and collected by the Board is necessary in order to preserve and protect the property of the Association, the Association is hereby granted a lien upon each membership, excepting all Charter Memberships, 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 Association, and which lien shall also secure all costs and expenses, including reasonable attorney's fees, which may be incurred by the Association in securing the payment of such assessment or enforcing its lien upon the membership. The lien granted to the Association may be foreclosed in the manner provided by North Carolina General Statutes Section 47A-22, and in any suit for the foreclosure of that lien, the Association shall be entitled to the appointment of a receiver for that membership. The lien granted to the Association 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 Association in order to preserve and protect its lien, and the Association 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 Association, and shall acquire such interest in any membership expressly subject to such lien rights.