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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
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INSTRUMENT # 2008016356

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

Return To: Rhina + Assoc
Lea, Rhina + Assoc
772-9960

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
LAND AND PROPERTY OF MIDDLE SOUND
MARINA ASSOCIATION, INC.
A NONPROFIT CORPORATION**

THIS DECLARATION, made on the date hereinafter set forth by Vanguard Properties of NC LLC, hereinafter referred to as "Declarant".

WITNESSETH:

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

WHEREAS, the above-referenced real property may be improved hereafter; and

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

NOW, THEREFORE, Declarant hereby declares that all of the property as described on "Exhibit A" and any membership allowed to use or enjoy such property or any portion thereof together with any parcel acquired hereafter, 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 such property or any part thereof including any membership right or interest, and shall inure to the benefit of each member of the corporation.

ARTICLE I
DEFINITIONS

SECTION 1: "CORPORATION" shall mean and refer to Middle Sound Marina Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

SECTION 2: "BOARD" AND "BOARD OF DIRECTORS" shall mean and refer to the Board of Directors of Middle Sound Marina Association, Inc. as lawfully constituted from time to time under said company's Articles of Incorporation as may be amended from time to time ("Articles of Incorporation"), this Declaration as may be amended from time to time ("Declaration") and the Bylaws.

SECTION 3: "COMMON AREA" shall mean all real and personal property now owned or hereafter acquired by the corporation. The common areas and facilities shall include all improvements on such property including, but not limited to, bulkheads, docks, piers, pilings, bathhouse (once completed), and parking facilities.

SECTION 4: "PLAT" shall mean the document attached hereto as "Exhibit B".

SECTION 5: "BOAT SLIP" shall mean the thirty (30) spaces in and above the water for the docking of a vessel as shown on the Plat.

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 each Boat Slip and each parking space shown on the Plat together with all other rights and benefits associated therewith.

SECTION 8: "MEMBER" shall mean and refer to any and all persons, groups, trusts, and/or entities who shall rightfully own a membership in the corporation.

SECTION 9: "CHARTER MEMBER" shall mean and refer to any person, group, or entity which is issued, possesses, or receives a Charter Membership in the corporation.

SECTION 10: "LICENSEE" shall mean and refer to any person, group or entity who secures the right to the use of a membership from a member. All such licenses, except licenses already in existence on the date of recording of this Declaration, must be approved by the Board following such procedures as the Board may prescribe. 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 member-licensor shall have no right to the use and enjoyment of the membership, except as expressly approved by the Board in writing.

SECTION 11: "BYLAWS" shall mean and refer to the Bylaws of Middle Sound Marina Association, Inc. as presently set forth and as may be lawfully amended from time to time. The Bylaws are attached hereto as "Exhibit E" and incorporated by reference as if fully set forth herein.

SECTION 12: "RULES AND REGULATIONS" shall mean and refer to the Rules and Regulations of Middle Sound Marina Association, Inc. as presently set forth and as may be lawfully amended from time to time. The Rules and Regulations are incorporated by reference as if fully set forth herein.

SECTION 13: "DECLARANT" shall mean Vanguard Properties of NC LLC and its successors and assigns.

SECTION 14: "DECLARANT RIGHTS" shall mean any right or combination of rights reserved by Declarant to add to or improve upon any property of the corporation. Such rights shall be reserved for the benefit of Declarant and shall include, without limitation, (i) the right to complete improvements intended or planned by Declarant to the Marina; (ii) to exercise any Declarant Right or other right reserved by Declarant pursuant to this Declaration or otherwise; (iii) to erect and maintain sales offices, management offices, construction offices, signs advertising the Marina or any portion thereof, and models on the corporation property and/or facilities; (iv) to use easements through the property of the corporation for the purpose of making improvements to any real or personal property; (v) to appoint or remove any officer of the corporation or any Director during the period of Declarant Control; (vi) to permit other land to be annexed to and made part of the corporation property in accordance with the terms of this Declaration, (vii) to make changes to street locations, names, and addresses; and (viii) any other right or interest reserved herein or granted to Declarant by law or any other legal instrument.

SECTION 15: "DECLARANT CONTROL" shall mean the period of time during which Declarant may unilaterally appoint and remove the officers and members of the Board without the approval of the membership. The period of Declarant Control shall terminate upon the latter of (a) one hundred twenty (120) days after conversion of ninety percent (90%) of the Charter Memberships to Class A Memberships and/or Class B Memberships and (b) two (2) years after the first Charter Membership is converted to a Class A Membership or Class B Membership.

SECTION 16: "MARINA" shall mean the real estate described on "Exhibit A" attached hereto, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements, and appurtenances belonging to or in any way pertaining to said real estate, including any and all riparian and/or littoral rights associated therewith, and any and all property that may be annexed to and made a part of the corporation property as hereinafter provided.

SECTION 17: "CAMA PERMIT" shall mean the document attached hereto as "Exhibit D" and any extensions, modifications, or other changes hereinafter mandated or allowed with regard to the same.

ARTICLE II
DISCLOSURES, DECLARANT RIGHTS, AND DECLARANT CONTROL

SECTION 1: STATUS OF DEVELOPMENT: Declarant is currently in the process of completing the development and construction of the Marina. Declarant currently anticipates completing all construction and development work related to Boat Slips A-1 through A-17 by May 1, 2008 and completing all construction and development work related to Boat Slips B-18 through B-30 by December 31, 2008. As stated in the Bylaws, Declarant shall transfer the property described at "Exhibit A" to the corporation on or before December 31, 2008. Declarant anticipates completing all other development and construction work on the corporation property and facilities by December 31, 2010. The above-referenced completion dates are merely estimates and not a promise, warranty, or guarantee. Declarant has obtained the CAMA Permit, which currently authorizes such development and construction. In addition, Declarant has applied to the State of North Carolina for an easement pursuant to N.C. Gen. Stat. § 146-12. All rights in and to the Boat Slips, docks, bulkhead, piers, pilings and all improvements related thereto are subject to the terms and conditions of such CAMA permit, compliance with its terms and conditions, and the continued existence, effectiveness, and renewal (if required) of such permit. Such rights are further subject to any terms and conditions that may be imposed with regard to any easement hereinafter granted by the State of North Carolina. Each member, by acceptance of membership, acknowledges these disclosures and agrees to accept membership subject thereto.

SECTION 2: DECLARANT RIGHTS: Declarant, its successors and assigns, specifically reserves the following Declarant Rights:

1. Declarant shall construct a bathhouse for the use and benefit of the corporation. Declarant hereby reserves the right, but not the obligation, to construct the bathhouse as part of a condominium or similar project. The corporation shall have no right or interest in any condominium unit other than the bathhouse unit. The additional (or non-bathhouse) units may be used as a clubhouse, office space, and/or for any other lawful purpose. The additional units, if built, will be for the sole and exclusive use and enjoyment of a club that is entirely separate from membership in the corporation. This separate club shall require separate membership and dues will be associated therewith such that members of the corporation shall have no right to access, use, enjoy, or otherwise enter upon any non-bathhouse units or the common areas associated with the same without first becoming a member of such separate club.

2. Declarant hereby reserves the right to construct utility lines, pipes, wires, ducts, conduits, and other facilities across the property and facilities of the corporation for the purpose of furnishing utility and other services. Declarant also reserves the right to withdraw and grant easements to public utility companies and municipalities and to install and convey utility lines, pipes, ducts, conduits and other utility improvements within those easement areas for the purpose of furnishing utility and other services.

3. Declarant hereby reserves the right to withdraw and to grant such easements for utility services, drainage, pedestrian traffic, or otherwise, across, under or through the property of the

corporation as may be considered desirable by Declarant for the use of the members for the purposes herein stated or to provide access for such utility service, drainage, and pedestrian traffic. Declarant hereby expressly reserves the right to withdraw and to grant a perpetual non-exclusive easement over all parking areas of the corporation as may be needed to connect said parking areas for access to and from all adjacent and nearby property now or hereafter owned by Declarant. Any such easement granted by Declarant shall be considered an easement appurtenant to the property which shall benefit from, such easement and such easement shall run with said property and all portions thereof unless otherwise provided by Declarant.

4. The rights reserved hereunder by Declarant may be exercised with respect to different portions of the property at different times, and Declarant makes no assurances as to the boundaries of those portions or the order in which those portions of the property of the corporation may be subjected to the exercise of Declarant Rights. If a Declarant Right is exercised with respect to any portion of the property, Declarant may, but is not obligated to, exercise any Declarant Right with respect to any other portion of the property.

5. All activities associated with any Declarant Rights may be performed outside the period of Declarant Control. Declarant shall complete all activities associated with any Declarant Right within five (5) years of the recordation of this Declaration.

6. Declarant reserves the right to use any portion or all of the property for the purpose of aiding in the transfer of Class A and/or Class B Memberships, including the right to use the parking areas for parking of prospective purchasers and other such parties as Declarant determines. The foregoing right shall include the right to display and erect any signs, billboards, and placards and to store, keep and exhibit the same and to distribute audio and visual promotional materials upon the property as well as the right to erect and maintain sales offices, management offices, construction offices, signs advertising the Marina or any portion thereof, and models on the corporation property and/or facilities.

7. Declarant further reserves the right to use easements over all of the property described in "Exhibit A" to perform any and all construction and/or related work to complete the construction of any improvements to the Marina or any adjacent property as Declarant deems necessary in its sole discretion. Such work may be performed with regard to, among other things, the docks, bulkhead, piers, pilings, condominium building including the bathhouse, and parking facilities. Declarant further reserves the right to use easements through the property of the corporation for utility services, drainage, pedestrian traffic, or otherwise, as may be considered desirable by Declarant for the purpose of making improvements.

8. The right to exercise any and/or all Declarant Rights and perform any development, construction, maintenance, repair, or similar work or activities with regard to the same.

9. The right to perform maintenance or repair work and the further right to control such work and repairs. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising

Declarant's rights. Such easement includes the right to convey utility and drainage easements to public utilities and/or municipalities, and other entities to fulfill Declarant's plan of development.

10. The right to store all materials, equipment, and other personal property on the corporation property that is being used with regard to any of the above-referenced work.

11. The right to retain and remove all materials, equipment, and other personal property that has not been represented as corporation property and which was used or was to be used with regard to any development, construction, repair, maintenance, or similar activities or work. Declarant further reserves the right to remove from the property any and all goods and improvements used in development, marketing, and construction, regardless of whether the same have become fixtures.

12. Declarant hereby reserves the right to annex to and make a part of the corporation property and facilities any other real property, whether now owned or hereafter acquired by Declarant or others, and whether developed by Declarant or others and said property may be brought within the scheme of this Declaration, the Rules and Regulations, and the Bylaws by Declarant in its sole discretion.

13. Declarant shall have no obligation to exercise any Declarant Rights.

SECTION 3: DECLARANT CONTROL

The period of Declarant Control shall terminate upon the latter of (a) one hundred twenty (120) days after Declarant transfers ninety percent (90%) of the Charter Memberships and (b) two (2) years after the first Charter Membership is transferred such that the first Class A or Class B Membership is created. During the period of Declarant Control, Declarant may unilaterally appoint and remove the officers and members of the Board without the approval of the membership.

SECTION 4: NO INTERFERENCE WITH RIGHTS

Neither the corporation nor any member may take any action or adopt any rule that will interfere with or diminish any Declarant Right without the prior written consent of Declarant. In relation to Declarant's exercise of any Declarant Right, the provisions of this Declaration which prohibit or require approval of additions, changes, alterations, betterments, or improvements shall not be applicable.

SECTION 5: ASSIGNMENT OF RIGHTS

Without limiting its general authority to transfer its rights hereunder, Declarant specifically reserves the right to transfer, without application or approval, any Declarant Rights or other rights contained or reserved in this Declaration or which shall be hereinafter imposed or reserved by Declarant, to any other person, group, or entity. Upon such transfer, the transferee shall have all of the rights of the Declarant except to the extent any such rights are limited in the transfer document.

ARTICLE III
MEMBERS AND MEMBERSHIP

There shall be three (3) classes of membership and the various rights and characteristics of said classes shall be as set forth in the Bylaws.

ARTICLE IV
COVENANT FOR ASSESSMENTS AND FINES

SECTION 1: CREATION OF LIEN AND PERSONAL OBLIGATION OF

ASSESSMENTS Each owner of each Class A Membership, agrees to pay the corporation the following assessments and fines (collectively "Assessments"): (1) regular assessments which shall consist of, among other things, utility bills and charges including, but not limited to, water, sewer, trash, electric, and Internet fees; insurance premiums; ad valorem taxes; charges for maintenance and repair of the corporation property; bank fees and charges; legal fees and charges; employee and independent contractor wages, training, uniforms, insurance, taxes and related fees; supplies and equipment; licenses and permits; boat maintenance and operation; accounting fees; and postage, printing and copying fees; (2) special assessments; (3) fines for any violation of this Declaration, the Bylaws, and/or the Rules and Regulations; (4) assessments for repairs of damage caused by fault of such member, such assessments to be fixed, established and collected from time to time as hereinafter provided; and (5) working capital assessments. All Assessments, together with such interest thereon, court costs, interest costs, reasonable attorneys' fees, 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 as provided in this Article. Each Assessment, together with such interest, court costs, collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the person(s) who was the owner of such membership at the time the assessment first became due. No lien shall be placed upon any Charter Membership. An assessment may be levied against any Class B Membership if the corporation levies an assessment against such membership for repairs of damage caused by such Class B member and a lien may be placed upon such Class B Membership and such lien may be foreclosed pursuant to the process set forth below.

SECTION 2: PURPOSE OF ASSESSMENTS Assessments levied by the corporation shall be used for the purpose of (1) promoting the recreation, health, safety and welfare of the members and their property; (2) the enforcement of this Declaration, the Bylaws, and the Rules and Regulations; and (3) in particular for the acquisition, purchase, lease, improvement, management, repair, and maintenance of the lands, piers, bathhouse, docks, pilings, properties, services, Boat Slips, bulkhead, and dock facilities of the corporation and related to the use and enjoyment of such properties.

SECTION 3: DETERMINATION OF REGULAR ASSESSMENTS

- A. 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. The percentage of each regular assessment to be paid by each Class A Membership shall be as set forth on "Exhibit C" attached hereto and incorporated herein by reference as if fully set forth.
- 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 and facilities of the corporation including the bulkheads, bathhouse, docks, piers, pilings, dock boxes, Boat Slips, and other dock facilities and to pay any property taxes levied against the corporation, insurance premiums, utility bills and charges, bank fees and charges; legal fees and charges; employee and independent contractor wages, training, uniforms, insurance, taxes and related fees; supplies and equipment; licenses and permits; boat maintenance and operation; accounting fees; and postage, printing and copying fees.

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 for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of any improvement upon the property 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. Except as specified herein all special assessments shall be determined, imposed, levied and collected in the manner prescribed in the Bylaws. If the Board desires to levy a special assessment for any other purpose, and any such proposed special assessment would result in any membership having to pay more than One Thousand Dollars (\$1,000.00) in any fiscal year, such assessment shall have the approval of the majority of Memberships then outstanding at a meeting duly constituted for this purpose, written notice of which shall be 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(s) of such meeting. The percentages applicable to the payment of regular assessments, as set forth on the attached "Exhibit C", shall also apply to the payment of all special assessments. Special assessments shall be due and payable on dates and times as determined by the Board or as approved by the Membership if such approval is required.

SECTION 5: QUORUM At any meeting called with regard to any assessment requiring membership approval, the presence at the meeting of memberships or of proxies entitled to cast fifty percent (50%) of all the votes in the corporation shall constitute a quorum.

SECTION 6: COMMENCEMENT OF REGULAR ASSESSMENTS AND DUE DATES The regular assessments provided for in this Article shall commence as to each membership on the first day of the month following its acquisition from Declarant by any person, group, or entity. Beginning with the year 2009, the Board 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 all Class A members. Regular assessments shall be paid on a monthly basis and shall be due and payable on the first day of each month. The corporation

shall, upon demand at any reasonable time, furnish a written receipt signed by an officer of the corporation setting forth whether the Assessments against a specified membership have been paid. Such receipt 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 Class A or Class B member damages or destroys by his or her fault, as determined by the Board, any of the property of the corporation including the bulkheads, piers, docks, Boat Slips, dock boxes, and/or other facilities, the corporation shall repair the damage or replace the destroyed property as soon as reasonably practicable and shall levy an individual assessment upon any and all owners of that membership for the full cost of repair or replacement.

SECTION 8: NONPAYMENT OF ASSESSMENTS AND RIGHTS AND REMEDIES

Any and all Assessments or any portion thereof which are not paid when due shall be delinquent within ten (10) days of the due date. If any Assessment or any portion thereof is not paid within thirty-three (33) 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.

Should any member desire to challenge an Assessment levied against such member by the Board, such member shall provide the Board with written notice of appeal within thirty (30) days of the levy of such Assessment but such right of appeal shall not limit any right of any member to challenge an assessment in a court of law or equity. Once written notice of appeal has been provided to the Board, the challenging member shall have no obligation to pay such Assessment or any portion thereof unless and until ordered by the Board to do so. Upon receiving the notice of appeal, the Board shall provide the challenging member with the opportunity to be heard at a scheduled hearing called for that purpose. Such hearing shall occur within twenty (20) days of the Board's receipt of the notice of appeal. After the hearing, the Board may order that the member pay the full amount of the Assessment, order the member to pay a reduced amount, or order that the member need not pay such Assessment. The Board shall issue its decision in writing within ten (10) days of the hearing and shall send such decision via U.S. Mail to the challenging member at the address on record with the corporation. If the Board orders an Assessment to be fully or partially paid, the member shall pay such amount in full plus interest at the rate of eighteen percent (18%) per annum from the date such Assessment was levied within fourteen (14) days after the Board sends its decision to the appellant member via U.S. Mail. This Article does not in any way limit the corporation's right to take any action necessary to protect itself including, but not limited to, the corporation's right to remove vessels or otherwise act under emergency circumstances.

Recognizing that proper operation, maintenance and management of the corporation and its property requires the continuing payment of costs and expenses therefor, and that such proper operation, management, and maintenance result in benefit to all members, and that the payment of such Assessments is necessary in order to preserve and protect the property of the corporation, the corporation is hereby granted a lien upon each Class A Membership and Class B

Membership, which lien shall secure and does secure the monies due for all Assessments now or hereafter levied against each such membership and which lien shall also secure interest which may be due on the amount of any delinquent Assessments owing to the corporation, and which lien shall also secure all interest costs, court costs, collection costs, and reasonable attorneys' fees, which may be incurred by the corporation in securing the payment of such Assessment or enforcing this lien upon the membership. The corporation may bring an action against the member(s) personally obligated to pay such unpaid Assessment(s) and/or may foreclose upon the lien against the membership. The corporation shall be entitled to collect its reasonable attorneys' fees and all interest, court, and collection costs incurred in any such action or foreclosure process. No member may waive or otherwise escape liability for Assessments by non-use or abandonment of such member's membership or otherwise.

SECTION 9: CLAIM OF LIEN AND FORECLOSURE The lien hereby granted unto the corporation shall be enforceable from and after the time a claim of lien is mailed to the delinquent member and any mortgagee or pledgee of such membership, and such claim of lien is filed with the New Hanover County Clerk of Superior Court, which claim of lien shall identify the membership encumbered thereby as such membership is identified on its Membership Certificate, the name(s) of the record owner(s) of such membership, all amounts due and payable, and the date when such Assessment(s) was first due. The claim of lien may be filed and mailed any time thirty-three (33) days after any Assessment, or any portion thereof, was first due and payable and the lien shall continue in effect until all sums secured by that lien as herein provided are fully paid. Such claims of lien shall include only Assessments which are due and payable when the claim of lien is filed, plus interest, costs, reasonable attorneys' fees, advances to pay taxes, and prior encumbrances and interest thereon. Such claims of lien shall be signed and verified by an officer or agent of the corporation. Any action brought to foreclose upon this lien shall be brought within any applicable statutes of limitation. Upon full payment of all sums secured by such claim of lien, the same shall become null and void.

The corporation shall be authorized to foreclose on such lien or claim of lien after commencing an action to enforce such lien in New Hanover County, North Carolina Superior or District Court and receiving a Court Order allowing foreclosure of such lien. Any Judge presiding in New Hanover County Superior or District Court shall be permitted to order foreclosure of the lien or claim of lien upon a showing by the corporation of the following: (1) the corporation issued an Assessment(s), (2) such Assessment(s) was properly levied in accordance with this Declaration and the Bylaws, (3) such Assessment(s) was not timely and/or properly appealed as required by this Declaration or such Assessment was appealed but the corporation has ordered such Assessment to be paid, in whole or in part, (4) the corporation mailed a copy of the claim of lien upon each delinquent member and any mortgage or pledgee in accordance with this Section, (5) the corporation filed a Claim of Lien with the above-referenced information with the Clerk of Superior Court, (6) the corporation commenced an action seeking foreclosure of the lien within any applicable statutes of limitation, and (7) the Assessment(s) and/or all interest costs, court costs, reasonable attorneys' fees, and collection costs associated therewith and allowed hereunder have not been fully paid. The Order of Foreclosure shall state that the corporation is the owner of such membership and shall set forth any and all amounts of

unpaid Assessment(s) plus all interest costs, court costs, reasonable attorneys' fees, and collection costs owed to the corporation. Upon the filing of such Order with the Clerk of Court, the corporation shall be entitled to sell or transfer the membership secured by the lien.

If the corporation sells or transfer any membership through foreclosure, it shall deduct from the proceeds of such sale or transfer all monies owed to any mortgagee or pledgee of such membership as well as all sums of money due to the corporation for Assessments and charges, interest costs, collection costs, all costs incurred in the bringing of the foreclosure suit, including reasonable attorneys' fees and court costs, and any and all expenses incurred in the resale of the unit, including the expense of advertising. All monies remaining after deducting the foregoing items shall be paid to the former member. In the event any membership is sold or transferred for an amount less than the sum of any mortgage or pledge debt, unpaid Assessment(s), and any and all interest costs, court costs, reasonable attorneys' fees, collection costs, and advertising expenses; the former owner(s) of such membership shall remain liable to the corporation for any and all amounts not satisfied by such foreclosure sale or transfer and the corporation shall be entitled to collect any such amounts.

SECTION 10: SUBORDINATION OF LIEN The lien provided for in this Article shall be subordinate to the lien of any first mortgage or pledge of any membership. Sale or transfer of the membership shall not affect any such lien. 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 Assessment 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.

SECTION 11: LIEN NOT EXCLUSIVE REMEDY Whenever any membership may be licensed, sold, transferred or mortgaged by the owner thereof, the corporation, upon written request of the Member(s), shall furnish to the proposed licensee, purchaser, transferee or mortgagee, a statement verifying the status of payment of any Assessment. Such statement shall be signed by any officer of the corporation and any licensee, purchaser, transferee, or mortgagee may rely upon such statement in concluding the proposed license, purchase, transfer, or mortgage transaction; and the corporation shall be bound by such statement.

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, through the above-referenced foreclosure process, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by the above-referenced foreclosure process to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sums then remaining due to the corporation.

ARTICLE V
MAINTENANCE

The corporation shall be responsible for the maintenance, repair and replacement of the corporation property, and all conduits, ducts, plumbing, wiring and other facilities located thereon for the furnishing of utility and/or other services. The corporation shall provide maintenance of all of its properties including bulkheads, docks, Boat Slips, piers, pilings, dock boxes and other dock facilities, parking lot and areas. The corporation shall also be responsible for dredging and related work necessary to maintain the water depth within each Slip and the corporation property at such depth as may be determined to be necessary or desirable, from time to time, by the Board. All dredged material removed from any Slip and the corporation property and shall be disposed of under such terms and conditions approved by the Board and allowed by law. If any incidental damage is caused to any Slip by virtue of any work which may be done or caused to be done by the corporation in carrying out its maintenance, repair or replacement activities, the corporation shall, at its expense, repair such incidental damage.

Whenever the maintenance, repair or replacement of any item for which the corporation is obligated to maintain, replace or repair at its expense is caused by any act or omission of any member or any member's guest, child, licensee, animal, or invitee, and such loss or damage may be covered by any insurance maintained in force by the corporation, the proceeds of the insurance received by the corporation shall be used for the purpose of making such maintenance, repair or replacement, except that the member who is responsible for the act or omission causing the damage shall be required to pay such portion of the cost of such maintenance, repair or replacement and shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. All members shall be responsible for any damage caused by any act or omission of their guests, children, licensees, invitees, and/or animals.

Whenever the maintenance, repair or replacement of any item for which the corporation is obligated to maintain, replace or repair at its expense is occasioned by an act or omission of a member or such member's guest, child, licensee, animal, or invitee, and such loss or damage is not covered by any insurance maintained in force by the corporation, the member who is responsible for the act or omission causing the damage shall be required to pay the cost of such maintenance, repair or replacement.

The cost of all maintenance, repair, and replacement work performed by the corporation shall be added to and become a part of the total annual assessment for which all Class A Memberships are liable as specified herein and in the Bylaws.

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, nor shall any addition to or change or alteration thereto 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.

For each Boat Slip there shall be only one (1) dock box. Each Class A Member shall have the exclusive right to the use and enjoyment of the dock box immediately adjoining the Boat Slip assigned to such member. No removal of any dock box or change in its location, size, design or construction shall be made without the prior written consent of the Board.

ARTICLE VII
USE RESTRICTIONS

SECTION 1: RULES AND REGULATIONS The Board shall have the power to amend the Rules and Regulations concerning the use and enjoyment of all the property of the corporation, including Boat Slips, docks, dock boxes, bulkhead, dock facilities, piers and pilings, and parking lot and areas. The Rules and Regulations shall be maintained at a place convenient to the members and available to them for inspection during normal business hours within three (3) business days after such a request for inspection is made in writing and delivered to the corporation.

SECTION 2: QUIET ENJOYMENT AND COMPLIANCE WITH LAW No obnoxious or offensive activity shall be carried on by any member or such member's guest, child, licensee, animal, or invitee in or upon the property of the corporation, including Boat Slips, docks, dock boxes, bathhouse, dock facilities, piers and pilings, and parking lot and areas, nor shall anything be done which may be or may become a public or private nuisance under North Carolina law. In addition, all members and their guests, children, licensees, and invitees shall observe all laws, zoning ordinances, rules, and regulations of all governmental authorities having jurisdiction over the corporation and/or the property. No member shall permit or suffer anything to be done or kept in such member's Boat Slip, or elsewhere on the corporation property, which will increase the rate of insurance on the corporation, or which will obstruct or interfere with the rights or privileges of any member.

SECTION 3: NO COMMERCIAL VESSELS The use of all Boat Slips is hereby restricted exclusively to docking vessels which are not "for hire" and are utilized solely for recreational purposes; provided, however, the corporation may permit limited use of Boat Slips by "for hire," charter, or commercial vessels subject to rules and regulations prescribed for such uses from time to time by the Board.

ARTICLE VIII
EASEMENTS

Subject to the Declarant Rights, the property of the corporation is hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the members for their use and enjoyment for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended for the use and enjoyment of the property.

All of the Boat Slips shall be, and the same are hereby declared to be subject to, a perpetual easement in favor of the corporation to perform all obligations relating to maintenance, repair and replacement as more particularly described in this Declaration and including, but not limited to, dredging and related work within the boundaries of any Boat Slip necessary to maintain the water depth in each Slip and the other common areas at such depth as may be determined to be necessary or desirable, from time to time, by the Board, together with all legal rights of a "profit a prende" to remove and dispose of the dredged material under such terms and conditions approved by the Board and allowed by law.

All of the property of the corporation including Boat Slips, docks, dock boxes, dock facilities, piers and pilings, bulkhead, and parking lot and areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, footings, air conditioning 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, accept, apply for, obtain, and establish upon, over, under and across all of its property such further easements as are appropriate for the convenient maintenance, repair, use and enjoyment of such property.

ARTICLE IX
PROHIBITION AGAINST PARTITIONING

Recognizing that the proper use and enjoyment of the Marina by all memberships is dependent upon the use and enjoyment of the common areas in common with all other members, and that it is in the interest of all members that the ownership of the common areas be retained by the corporation, it is hereby declared that no member nor any other person, group, or entity shall bring or have any right to bring any action for partition or division of the corporation property.

ARTICLE X
RIGHT OF ENTRY IN EMERGENCY SITUATIONS

In case of any emergency originating in or threatening the corporation property or any vessel or other property located in the Marina, regardless of whether any member is present at the time of such emergency, the corporation shall have the right to enter any such vessel or other property as well as any of its property, including but not limited to any Boat Slip, for the purpose

of remedying or abating the cause of such emergency, and such right of entry shall be immediate. The corporation shall have the right to remove any vessel from the Marina and take any other action it deems reasonably necessary to protect the Marina. The corporation shall be promptly and fully reimbursed by the appropriate member(s) for all costs incurred by the corporation with regard to the exercise of such right of entry.

ARTICLE XI

APPROVAL OF SALE, TRANSFER, OR LICENSE AND RIGHT OF FIRST REFUSAL

SECTION 1: RIGHT OF FIRST REFUSAL In the event that any Class A member desires to sell or transfer any such member's Class A Membership, then such member shall seek the approval of the corporation, and the membership shall first be offered for sale to the corporation at the same price and on the same terms and conditions as the purchaser or transferee has agreed to meet subject, however, to the provisions of Section 2 of this Article. All members shall give the corporation written notice of their desire to sell or transfer by registered mail, return receipt requested, and shall further advise the corporation of the name and address of the proposed purchaser or transferee, the amount and terms of such offer, and such other information as the corporation may reasonably require. Within ten (10) days after receipt of that notice, the corporation must approve such request or mail written notice to the transferring member of its exercise of its option to purchase the membership. Should the Board fail or refuse within thirty (30) days after the receipt of the written notice to exercise its option, such failure shall be deemed to be a rejection of the offer and the approval of the proposed sale or transfer shall be deemed granted. Any transfer or sale of any membership by any member to any person, group, and/or entity shall be subject to all the terms, covenants, limitations and provisions of this Declaration, the Bylaws, and the Rules and Regulations. Provided, however, that this right of first refusal shall not apply to or burden the process of foreclosure of the lien of the first mortgage or pledge of a commercial bank or thrift institution which holds a first mortgage or pledge on any membership certificate(s).

SECTION 2: LICENSE No member shall license any membership rights without previously obtaining the written approval of the corporation. The Board shall adopt a procedure for application for and approval or rejection of such applications.

SECTION 3: PLEDGING No member may pledge or mortgage his membership or any interest therein without the express, prior approval of the corporation, except a first pledge or mortgage lien made to a bank or other person, group, or entity to finance all or a portion of the purchase price of a membership. The corporation shall maintain a record of all pledges, mortgages, and liens of which it is notified.

SECTION 4: EFFECTIVE DATE The provisions of this Declaration shall become effective upon the recording of this Declaration in the New Hanover County Register of Deeds.

SECTION 5: TRANSFER VOIDABLE Any sale, transfer, conveyance, license, or lease of any membership without complying with the provisions of this Article is voidable at the election of the corporation in its sole discretion.