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**NEW HANOVER COUNTY, NC**

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

NC FEE \$74.00

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTION  
FOR PORT CITY MARINA YACHT CLUB**

When recorded return to:  
Christopher Theriault  
P.O. Box 16589  
Wilmington, NC 28401

STATE OF NORTH CAROLINA  
 COUNTY OF NEW HANOVER

**DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS FOR  
 PORT CITY MARINA YACHT CLUB**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PORT CITY MARINA YACHT CLUB (the "Declaration") is made this 30 day of October, 2019 by NRMH Holdings, LLC, a North Carolina Limited Liability Company ("Declarant").

**STATEMENT OF PURPOSE**

Declarant is owner of certain property in New Hanover County, North Carolina, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference. Declarant desires to create thereon an exclusive marina facility dedicated to boating activities, all to be named PORT CITY MARINA YACHT CLUB.

Declarant desires to insure the attractiveness of PORT CITY MARINA YACHT CLUB and to prevent future impairment thereof, to prevent nuisances, to preserve, protect, and enhance the values and amenities of all properties within PORT CITY MARINA YACHT CLUB and to provide for the maintenance and upkeep of all Common Areas therein, such Common Areas defined further below. To accomplish this, the Declarant subjects the real property described herein, along with such additions as may hereafter be made thereto, to the covenants, restrictions, conditions, easements, charges and liens hereinafter set forth, each and all of which is for the benefit of said property and each owner thereof.

Declarant has created or will create an organization which will be delegated and assigned the powers of owning, maintaining, managing and administering the Common Areas and facilities in the PORT CITY MARINA 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 preserve, protect, manage and enhance the values and amenities in PORT CITY MARINA YACHT CLUB, to insure the Members' use and enjoyment of the specific rights and privileges and easements in the Common Areas, and to provide for the management, maintenance, and upkeep of the Common Areas.

Declarant has or will cause to be incorporated under North Carolina law Port City Marina Yacht Club Owners Association, Inc. as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

NOW THEREFORE, Declarant, by this Declaration, does declare that all of the property described herein, and such additions thereto as may be made 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 (as may be amended from time to time) which shall run with the real property described herein and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

## ARTICLE I – DEFINITIONS

Section 1. “Association” shall mean and refer to Port City Marina Yacht Club Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 2. “Boat Slip” shall mean and refer to a wet boat slip, which is a designated boat space located in and above the water adjacent to a dock in the Marina, for the docking of a boat or watercraft. Each “Boat Slip” shall be a portion of the Marina Facility, said Boat Slips being shown diagrammatically on the Map or on a plat to be recorded hereafter by the Declarant in a manner generally consistent with Exhibit B attached hereto.

Section 3. “Bylaws” shall mean the bylaws of the Association, as amended, modified or supplemented from time to time.

Section 4. “Common Areas” shall mean all real property (including the appurtenances and improvements thereto) conveyed to and owned by the Association for the common use and enjoyment of the members of the Association.

Section 5. “Declarant” shall mean and refer to NRMH Holdings, LLC and shall also refer to any person, firm, or entity which shall be designated as a “Declarant” by NRMH Holdings, LLC or which shall be a successor to or assign of NRMH Holdings, LLC.

Section 6. “Development” shall mean and refer to PORT CITY YACHT CLUB, with such marina and other facilities located on the property described in Exhibit A and may include future development of Boat Slips, and / or other properties annexed hereto.

Section 7. “Existing Property” shall mean the property described in Exhibit A attached hereto.

Section 8. “Map” shall mean and refer to a map of the Existing Property attached hereto as Exhibit A and the maps of any additions to the Existing Property which may be recorded by the Declarant in the New Hanover County, North Carolina, Public Registry hereafter.

Section 9. “Marina” or “Marina Facility” shall mean and refer to the Existing Property and that certain facility located adjacent to and upon the Existing Property, including all pilings, piers, docks and appurtenances thereto for the docking of boats and crafts located or to be located in the navigable waters immediately adjacent to the Existing Property.

Section 10. “Member” shall mean and refer to any person or entity who holds Membership in the Association.

Section 11. “Membership” shall constitute the personal property of the Member, with all rights, privileges, and obligations as set out herein or in the Bylaws and Rules and Regulations. Said Membership shall not constitute real property or any interest therein.

Section 11.1 “Membership Certificate” shall constitute a writing issued to the Member as evidence of his or her Membership.

Section 12. “Properties” or “Property” shall mean and refer to the Existing Property described herein, and such additions thereto as may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association.

Section 13. “Rules and Regulations” shall mean the Rules and Regulations for the Marina and the Association adopted pursuant to this Declaration and the Bylaws, as may be amended from time to time.

Section 14. “Transient Boat Slips” shall mean those Boat Slips reserved by the Declarant for temporary mooring or dockage of vessels.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF PORT CITY YACHT CLUB

Section 1. Property Subject to Declaration. All of the Existing Property is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and the jurisdiction of the Association.

Section 2. Additions to Existing Property.

- a. Additional land which is contiguous to the Existing Property or to any land added to the Existing Property, or any which is within one mile of any Existing Property may be brought within the schedule of this Declaration and the jurisdiction of the Association by the Declarant, in future stages of development, without consent of the Association or its Members, provided that such annexations must occur within ten (10) years of the date of the filing of this Declaration.
- b. The additions authorized under Section 2(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, North Carolina Deed 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, the obligation to pay 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 in accordance herewith.

## 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 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 said permits, compliance with such terms and conditions, and the continued existence, effectiveness, and renewal (as required) of such permits. Each Member, by acceptance of Membership, acknowledges these disclosures by Declarant, accepts Membership in the Association subject thereto, and subject to any present and future laws, rules and/or regulations which may be issued and adopted by any governmental authority having jurisdiction over the Marina Facility.

## ARTICLE IV

### **MEMBERS AND RIGHTS OF MEMBERSHIP**

Section 1. Classes of Membership. There shall be two (2) classes of Members and Membership: Charter and Class A. Each Membership shall entitle the holder thereof to the exclusive use of a particular Boat Slip, subject to the terms and conditions of this Declaration. The various rights and characteristics of said classes of Membership shall be as set forth in this Declaration.

Section 2. Charter Membership. In consideration of the establishment of the Development and the creation of the proposed Marina Facility, the Association shall issue and assign to Declarant a Charter Membership for each and every Membership in the Association. Each Charter Membership shall entitle the Declarant to the exclusive use and enjoyment of one (1) particular Boat Slip as identified on the Membership Certificate, the form of which is attached hereto as Exhibit C and incorporated by reference as if fully set forth herein. The owner of each Charter Membership 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. The owner of each Charter Membership shall also have those Common Area rights and the voting right set forth in this Declaration as associated with Charter Membership. Said Charter Memberships shall be freely transferable by the Declarant without any application or approval except from any mortgagee or pledgee of such Charter Memberships. Upon sale or assignment of the title to any such Charter Membership by Declarant to another person, partnership, corporation or other entity, such Membership shall immediately cease to be a Charter Membership and shall automatically convert to and be a Class A Membership.

Section 3. Class A Membership. Each Class A Membership shall entitle the owner of such Membership to the exclusive right, subject to the provisions of this Declaration and the provisions of the Bylaws and Rules and Regulation issued pursuant hereto, to occupy, possess, and lawfully use that particular Boat Slip identified on such Membership Certificate. Each Class A Membership shall also have those Common Area rights and the voting rights set forth in this Declaration as associated with Class A Membership.

Section 4. Class Rights in Common Areas. Each Member, whether Charter Member or Class A Member, shall have a nonexclusive right and easement of enjoyment in and to the Common Areas and in the Boat Slip associated with such Membership, subject to the rights of the Association, including:

- a. To assign particular Class A members the right to exclusive use and enjoyment of Boat Slips in the Marina Facility, including, but not limited to, Transient Boat Slips upon the terms and conditions set forth in this Declaration;
- b. To limit the number of guests of members;
- c. In accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities;
- d. To suspend all rights of any Member to the use and enjoyment of the Common Areas and / or any Boat Slip 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 to other members or otherwise lawfully use all right of any such Member during such period of suspension;
- e. To dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purpose, subject to such conditions as may be agreed to be the Members. No such dedication or transfer shall be effective unless approved by the consent of the Membership based upon an affirmative vote of at least two-thirds (2/3) of the total votes eligible to be cast;
- f. To adopt and enforce reasonable rules and regulations for the use of the Common Area and / or Boat Slips; and
- g. Any other rights of the Association as provided herein.

Section 5. Voting Rights. Unless expressly provided otherwise by the Bylaws of the Association, the voting rights of the Members at any meeting of the Members shall be as follows:

- a. Each Class A Membership shall have one (1) vote; and
- b. Each Charter Membership shall have five (5) votes.

Section 6. Transfer of Membership. Any and all Charter Memberships may be transferred, assigned, pledged, or leased by Declarant without limitation and without the requirement of any approval by the Association provided, however, the consent of any mortgagee or pledgee of Charter Memberships shall be required. No other class of Membership may transfer, assign, pledge, or lease any Membership or any interest therein, except as provided in this Declaration, or in the Bylaws or Rules and Regulations of the Association.

## ARTICLE V

### PROPERTY RIGHTS

Section 1. Ownership of Common Areas. Declarant shall convey the Common Areas, and all fixtures, buildings, structures, riparian and littoral rights appurtenant thereto, along with an easement for ingress and egress to and from the public right of way, to the Association on or before \_\_\_\_\_, or as soon thereafter as is reasonably possible. Notwithstanding the recording of any Map or any other action by the Declarant or the Association, all Common Areas (including the Common Area streets and roads and any access easement) shall remain private property and shall not be considered dedicated to the use and enjoyment of the public except with proper authorization.

Section 2. Permitted use of Common Area. The Members shall have the right to the use and enjoyment of the Common Areas subject to the terms and conditions set forth in this Declaration, the Bylaws, and the Regulations, including as the same may all be amended from time to time.

Section 3. Delegation of Use. Except as otherwise provided herein and subject to the terms and conditions of this Declaration, any Rules and Regulations and the Bylaws, as the same may be amended from time to time, any Member may delegate his or her right of enjoyment of the Common Areas to the members of his or her family, his or her guests, his or her tenants, or contract purchasers, only by written assignment in a form prescribed by, and on such terms as are required by, the Association.

Section 4. Pier and Fuel System. All past, present, and future rights, duties, and obligations associated with the approximately 660' by 55' concrete pier located on the Existing Property as well as all portions of the system providing fuel service to the Marina (collectively "Pier and Fuel System") shall remain with Declarant and shall not be owned by the Association nor shall the same be Common Area unless and until Declarant or its successor or assign conveys such property to the Association and dedicates the same as Common Area. The owner of the Pier and Fuel System areas shall be responsible for and entitled to all revenues, expenses, profits, losses, and liabilities associated with the Pier and Fuel System areas. Furthermore, Declarant shall be entitled to host any concert or other event on the Pier without any approval of the Association provided Declarant provides five (5) days' notice of any such event.

## ARTICLE VI

### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. Each owner of each Membership, except certain Charter Memberships as otherwise provided herein,

agrees to pay the Association: (1) regular assessments, (2) special assessments, (3) assessments for violations of this Declaration, the Bylaws or rules and regulations of the Association and (4) assessments for repairs of damage caused by the fault of the Member to be assessed, (including that of his guests, agents and invitees), 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 and 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 allowed by law, shall also be the personal obligation of the person(s) who was/were the owner of such Membership, jointly and severally, at the time the assessment became due. The obligation of the Member for delinquent assessments shall pass to his successor in title unless and until such obligation is paid in full.

Section 2. Exemption from Regular Assessments for Charter Memberships. Charter Memberships associated with Transient Boat Slips shall be excepted from all assessments until said Charter Memberships are sold or assigned and automatically converted to Class A Memberships, as provided in this Declaration, on which date and time said exception from all assessments shall terminate. All other Charter Memberships shall be exempt from Regular Assessments, except as provided in this Declaration, which exemption from Regular Assessments provided by this Section 2 shall automatically terminate five (5) years from the recordation of this Declaration. Upon termination of any exemption from assessments, as provided by this Section 2, the effective date from which said Membership shall become subject to assessments under the terms of this Declaration shall be the date the termination is effective, prorated for the period in which the assessment is made.

Section 3. Purpose of Assessments. The assessments levied by the Association shall be used as follows:

- a. To maintain all private driveways from the roads and parking areas constructed within the Common Areas to the standard of maintenance which would be required by New Hanover County;
- b. To maintain the Marina Facility and all pilings, piers, docks, buildings, bulkheads (including those adjacent to the Common Areas), and other appurtenances thereto in good condition and repair for the safe use and enjoyment of the Members;
- c. To maintain all access easements, docks, bulkheads and footbridges in the Common Areas in an easily passable condition, free from failures, fallen trees, undergrowth, and other obstructions; and to keep all dead, diseased, or decaying trees, shrubs and bushes removed from such areas and to replace such items with new trees, shrubs and bushes;
- d. To keep the drainage easements free of pollution and natural debris;
- e. To keep all Common Areas and amenities of 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 standard for private residential communities including any necessary removal and replacement of landscaping;

- f. To provide such staff as may be deemed reasonably necessary for the proper operation and function of the Marina Facility along with security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals;
- g. To provide for garbage removal service for all Common Areas and the Marina Facility;
- h. To pay all ad valorem taxes levied against the Common Areas and property owned by the Association;
- i. To maintain and pay the premiums on all hazard insurance carried by the Association, on the Common Areas and all public liability insurance carried by the Association pursuant to the Bylaws;
- j. To enforce these Covenants and Rules and the Rules and Regulations of the Association;
- k. To pay all legal, accounting, and other professional fees and all other expenses incurred by the Association in carrying out its duties set forth herein or in the Articles or Bylaws; and
- l. To accumulate and subsequently maintain a contingency reserve equal to 10% of the sum of the amounts described in subsections (a) through (k) above in order to fund unanticipated expenses of the Association.

#### Section 4. Regular Assessments.

- a. The Board shall determine the amount of regular assessments against Members as specified herein and in the Bylaws, which are incorporated herein by reference. 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 Common Areas and property of the Association including the private roads, bulkheads, docks, piers, pilings, and other facilities. Assessments shall be payable periodically as determined by the Board, but no more frequently than monthly.

Section 5. 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 Areas, or the necessary fixtures and personal property related thereto, or defraying the expenses of operation, maintenance, or renovation not adequately funded by

regular assessments, or establishment of an emergency fund. Except as specified herein, all special assessments shall be determined, imposed, levied and collected in the manner prescribed herein and in Bylaws, provided that, if such special assessment exceeds one thousand dollars (\$1,000.00) per Membership in any fiscal year, such assessment must receive the approval of a majority of the votes eligible to be cast at a meeting of the members duly constituted for that 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 6. Quorum for Action on Special Assessments. At any meeting of the Members called for the purpose of considering the approval of any special assessment as provided in Section 5 above, the presence at the meeting of Memberships or of proxies entitled to cast sixty percent (60%) of all votes shall constitute a quorum.

Section 7. Reserved.

Section 8. Date of Commencement of Assessments, Due Date. The obligation for regular assessments provided for herein shall commence as to each Membership on the first day of the month following its acquisition from the Declarant by some other person, partnership, corporation or other entity. Except as otherwise specifically provided herein, no assessment shall be levied or charged against any Charter Membership which is excepted from assessments under Section 2 of this Article. 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 and any special assessment shall be sent to the Member(s) owning each Membership. The due dates of any regular or special assessment shall be established by the Board of Directors.

Section 9. Effect of Nonpayment 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 a 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 a rate of twelve percent (12%) per annum. No Member may waive or otherwise escape liability for the assessments provided herein by non-use or abandonment of his or her 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 result in benefit to all of the owners of Memberships, and that the payment of such common expenses represented by the assessments and the property of the owners of Memberships is required therefor, the Association is hereby granted a lien upon each Membership which is subject to assessments, which lien secures the monies due for all assessments now or hereafter levied against the owners of said Memberships, all 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 said lien. The lien granted to the Association may be foreclosed in a manner provided by law or this Declaration, and in any suit for the foreclosure of that lien, the Association shall be entitled to, but not required to have, 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 advance 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. The lien granted herein shall be in addition to any other rights granted herein or by law to the Association for the enforcement of the obligations of the Members to pay said assessments.

Section 11. Subordination of Lien to Mortgages or Security Interest.

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or security interest, under the Uniform Commercial Code or otherwise, or other pledge of the membership as collateral to any lender, which mortgage, security interest or pledge is provided for the purchase thereof. 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 Association nor shall a new certificate of Membership be issued by the Association until the lien is satisfied. However, the sale or transfer or sale of any Membership subject to any mortgage, security interest, or other pledge, pursuant to a decree of foreclosure under such mortgage, security interest or other 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 provided, however, that the foreclosed Member shall remain fully liable for such unpaid assessments. No sale or transfer shall relieve such Member from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Claim of Lien and Foreclosure.

The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the public records of New Hanover County, North Carolina, which claim shall state the description of the Membership encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable at any time after default and the lien shall continue in effect until all such sums secured by that lien as herein provided shall have been fully paid. Such claim of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien, shall be signed and verified by an officer or any of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The Association shall be authorized to foreclose on such lien or claim of lien in any manner allowed by law. The lien provided herein shall be subordinate to the lien of any first mortgage or pledge providing purchase money for such Membership, and any person, firm or entity acquiring title to any Membership by virtue of any foreclosure, transfer in lieu of foreclosure or judicial sale, shall be liable and obligated only

for assessments as shall accrue and become due and payable thereafter. After satisfaction of the lawful claims of the first mortgagee / pledge, the net proceeds from any foreclosure sale or private sale shall be first applied to the payment of all lien claims of the Association, and the balance of such sale proceeds shall then be delivered to the owner(s) of the Membership which was subjected to the foreclosure or private sale in lieu of foreclosure. In the event of acquisition of a Membership, transfer in lieu of foreclosure or judicial sale, and assessment or assessments as to which the party so acquiring the Membership by shall not be liable shall be absorbed and paid by all of the owners of all Memberships as part of the common expenses, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from payment thereof or the enforcement of collection of such payment by means other than foreclosure.

Section 13. Lien Not Exclusive Remedy. Whenever any Membership may be licensed, sold or mortgaged by the owner thereof, the association upon written request for the Member(s) shall furnish to the proposed licensee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which may be due and payable to the Association by such Membership. Such statement shall be signed by any officer of the Association and any licensee, purchaser or mortgagee may rely upon such statement in concluding the proposed license, purchase, or mortgage transaction; and the Association shall be bound by such statement. The Association may charge a fee of \$100 for any such request.

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

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

Section 14. Special Assessment for Violation. For the violation by a Member or his or her guest, tenant, assignee, or licensee, 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 three hundred dollars (\$300.00) for each occurrence plus an additional amount of one hundred dollars (\$100.00) for each day the violation continues after ten (10) days from notice thereof.

Section 15. Assessment for Repairs of Damage Caused by Fault. If a Member or his or her guest, tenant, agent, assignee, or licensee damages or destroys by his or her fault, as determined by the Board, any part of the Common Areas or property of the Association, including without limitation the private roads, landscaping, 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 said Member for the full costs of repair or replacement. All Class A and Charter Memberships shall be subject to Assessment under this Section.

Section 16. Procedure for Certain Assessments. With regard to assessments for violations under Section 14, of this Article, and to assessments for repairs to damage under Section 15 of this Article, the Board shall provide an available hearing to the Member upon whom it is proposed to impose such an assessment. At the hearing, the Board shall provide to the Member charged notice of the charge and the proposed assessment, opportunity to be heard and to present evidence, and notice of the decision. The decision of the Board shall be final. Such assessment shall be a lien and shall be enforceable as otherwise provided by this Article.

## ARTICLE VII

### COMMON AREAS AND EASEMENTS

Section 1. Use of Common Areas. The Common Areas shall not be used in any manner except as provided in this Declaration and as may be approved or specially permitted by the Declarant or the Association pursuant to power and authority granted by this Declaration, the Bylaws or the Rules and Regulations, as the same may be amended from time to time. Subject to and pursuant to the provisions of the Articles of Incorporation, Bylaws and Declaration, the Board of Directors of the Association shall have the unilateral power to formulate, publish, amend, modify, and enforce reasonable rules and regulations concerning the use and enjoyment of all of the Common Areas and the property of the Association, including private roads, Marina Facility, and parking lots and areas.

Section 2. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on in or upon the Common Areas or the property of the Association, nor shall anything be done which may be or may become a public nuisance as determined by the law of the North Carolina.

Section 3. Maintenance of Common Areas. The Association shall provide maintenance of all of its Common Areas and the properties of the Association and properties which the Association has an obligation to maintain such as bulkheads adjacent to the Marina Facility, including private roads, Marina Facility, bulkheads, parking lot and areas, piers, docks, as well as maintenance dredging of the submerged lands of the Marina Facility. The costs of such maintenance shall be added to and become a part of the total annual assessment as specified herein and in the Bylaws.

Section 4. Licenses, Permits and Indemnification. Upon recording of the Declaration, the Declarant shall transfer and assign to the Association all its interest in and rights and obligations under any Coastal Area Management Act ("CAMA") permit and any Stormwater Permit, and any other applicable government licenses and permits obtained by the Declarant applicable to the development or operation of the Property or the Marina Facility (collectively the "Permits"). Upon said transfer or assignment, it shall be the sole responsibility of the

Association to keep said Permits renewed or otherwise in force as may be required for the proper management and operation of the Marina Facility or the Property. The Association shall defend, indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as the responsible party under Permits after the date Declarant tenders transfer of its responsibilities under the Permits. From and after the transfer of Declarant's responsibilities under the Permits to the Association, the oversight, supervision, management and administration of the CAMA Permit shall be the sole responsibility of the Association. The Association's duties with respect to the Permits shall be carried out in accordance with the terms and conditions of this Declaration, the Bylaws, and the Permits.

Section 5. Easement Affecting Common Areas. All of the Common Areas and the property of the Association shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, footings, air conditioning compressors, grass lines, telephone, cable 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 Association shall have the power and authority to grant and establish additional such easements upon, over and under Common Areas for the convenient maintenance, repair, use and enjoyment of such properties.

Section 6. Easements Reserved by Declarant.

- a. Declarant reserves easements over the Common Areas, including the streets and roads located therein, for use by the Declarant in developing other real property owned by the Declarant.
- b. Declarant shall have the right to grant easements to third parties for ingress and egress and for utility purposes over and across all Common Areas, including the streets and roads located thereon, which are reasonably necessary in connection with the development of such other real property owned by the Declarant. Such easements shall be utilized in common by the Association, the Members, the Declarant, and the subsequent owners of portions of Declarant's other real property.
- c. Declarant reserves easements for the installation and maintenance of driveways, walkways, parking areas, water, telephone, electrical and cable lines, sanitary and sewer and storm drainage facilities, pumping and lift stations, fuel facilities, drainage ditches and for other utility installations over the Properties.
- d. Each Member, by his or her acquisition of a Membership, and the Association by its acceptance of the Common Areas, acknowledges all such reservations of easements as set out herein and the right of Declarant to transfer such easements to the Association or to any third party utility company as Declarant may choose.
- e. The easements reserved herein by the Declarant include the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or take any similar action

reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development.

- f. Declarant further reserves an easement for and the right to install, service, maintain, utilize and remove local wells, pumping stations, lift stations and tanks within any Common Areas.
- g. Within any such easement described in this Section 6, no structure, planting or other material shall be placed or permitted to remain which may materially interfere with the use of said easement area, the installation of any facilities or utilities therein, change the direction of the flow of, or obstruct or retard the flow of water through drainage channels in the easements.
- h. Declarant shall have the continuing right (but not the obligation) and easement to maintain said easements provided by this Declaration, and all sewer and water lines or facilities located on the Property.
- i. Declarant, for itself and its agents, licenses and other authorized users of the Transient docks reserves an easement for ingress and egress on, through, over and across the Common Areas and docks, to and from the Transient Boat Slips and to any Boat Slips it owns.

Section 7. Right of Entry. In case of any emergency originating in or threatening any Boat Slip or any vessel in a Boat Slip, or the Common Areas, regardless of whether the Owner or other Person in occupancy is present at the time of such emergency, the Association, or any other Person authorized by it, shall have the right to enter such Unit, Slip, Boat and/or such Common Areas for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

Section 8. Extreme Weather. In the event of a pending named storm, hurricane or other extreme weather, the Association may, in its sole and reasonable discretion, issue notice to any of the Members that the Members (and their pets, guests, licensees, and invitees) and some or all boats must be removed from the Boat Slips, Common Areas and/or the marina basin. In such case, the Association will attempt to provide as much advance notice as is practicable under the circumstances of the necessity of said removal. In the event that such notice is given by the Association, all Owners must remove their boats from the designated areas within the timeframe prescribed by the notice. Owners who violate the notice are responsible for all damage resulting therefrom, and agree to hold harmless, defend and indemnify the Association from any such damage. Owners are required to have a "hurricane plan" for their boats and storage during such a weather event, compliant with Rules and Regulations promulgated by the Association. Nothing in this Section will prevent the Board from adopting other or additional Rules and Regulations applicable during periods of extreme weather, present or pending.