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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
WATERFRONTE VILLAS AND YACHT CLUB
MARY SUE OCTS
REGISTER OF DEEDS
NEW HANOVER CO NC

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 9th day of September, 1997 by Ellsworth-Sloane, LLC, a North Carolina limited liability company, 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 as in Article II, Section 1 hereof; and

Declarant desires to create thereon an exclusive residential community of single-family townhouse residences, together with a marina, pool and clubhouse to be named Waterfronte Villas and Yacht Club.

Declarant desires to insure the attractiveness of Waterfronte Villas and Yacht Club and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within Waterfronte Villas and Yacht Club and to provide for the maintenance and upkeep of all common areas in Waterfronte Villas and Yacht Club. To this end the Declarant desires to subject the real 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

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DRAWN BY Gary Davis
SUBMITTED TO Lisa Ballantine
(910) 763-0673

will be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities in Waterfronte Villas and 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 and enhance the values and amenities in Waterfronte Villas and 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.

To that end the Declarant has caused to be incorporated under North Carolina law, Waterfronte Villas Owners' Association, 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 said 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 Waterfronte Villas Owners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "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 Marina Facility, pool, clubhouse, private streets and roads, and other areas as may be marked on the Map.

Section 3. "Declarant" shall mean and refer to Ellsworth-Sloane, LLC and also shall mean and refer to any person, firm or corporation which shall also be designated as a "Declarant" by Ellsworth-Sloane, LLC or which shall be a successor or assignee of Ellsworth-Sloane, LLC.

Section 4. "Development" shall mean and refer to Waterfronte Villas and Yacht Club, a single-family townhouse residential development together with marina, pool and clubhouse as shown on the map referred to and may include future development of Lots, Boat Slips, and/or other properties annexed hereto.

Section 5. "Lot" shall mean and refer to any numbered plot of land, with delineated boundary lines, appearing on the Map.

Section 6. "Map" shall mean and refer to a map of the Existing Property described in Article II, Section 1 hereof, delineating the "lots" and "common area" to be recorded in the New Hanover County, North Carolina, Public Registry and the maps of any additions to the Existing Properties which may be recorded by

Declarant in the New Hanover County, North Carolina, Public Registry hereafter.

Section 7. "Marina" or "Marina Facility" shall mean and refer to that certain facility, including all piling, piers, docks and appurtenances thereto, for the docking of pleasure boats and crafts, located or to be located in the navigable waters of Myrtle Grove Sound immediately adjacent to that high land comprising the Existing Property described in Article II, Section 1 hereof.

Section 8. "Boat Slip" shall mean and refer to space in and above the water adjacent to Myrtle Grove Sound for the docking of a pleasure boat or craft, and being a portion of the Marina Facility, said boat slips to be shown diagrammatically on a plat to be recorded hereafter by the Declarant.

Section 9. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "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.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF
WATERFRONTE VILLAS OWNERS' ASSOCIATION, INC.

Section 1. Existing Property. The real 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 as follows:

That certain tract or parcel of land lying and being in Carolina Beach Township, New Hanover County, North Carolina, and being those tracts as described in Deed Book 2108, page 379, and Deed Book 2150, page 359, and Deed Book 2117, page 794, in the Office of the Register of Deeds of New Hanover County, North Carolina, and being more particularly described as follows:

BEGINNING at an old iron pipe located at the intersection of the northern right of way of Spencer Farlow Drive extended (60 ft. public right of way), with the eastern right of way of Risso Lane (15 ft. public right of way at that point), and from said point of beginning, thence with the eastern right of way of Risso Lane N 01-29-18 W 169.40 ft; thence N 01-30-51 W 40.08 ft; thence N 01-29-36 W 112.34 ft to an old iron pipe, being in the southern line of the Daniel P. Cappa land, thence with said line and leaving said Risso Lane N 85-38-48 E 207.10 ft to the mean high water line of Myrtle Grove Sound, thence with said mean high water line the following bearings and distances, S 48-09-23 E 179.92 ft, to a p.k. nail on a bulkhead, N 88-51-36 E 40.46 ft, S 03-38-44 E 80.63 ft, S 54-43-30 E 46.18 ft, S 14-24-42 E 48.84 ft, S 48-36-05 W 9.63 ft, N 31-28-02 W 34.71 ft, N 86-20-21 W 11.35 ft, S 08-21-58 W 36.27 ft, S 32-43-08 E 9.92 ft, S 00-22-51 W 50.29 ft, S 67-39-08 E 7.27 ft, S 09-09-05 E 5.90 ft, S 67-46-51 W 13.45 ft; S 15-22-04 E 10.99 ft, S 01-38-05 W 163.17 ft, S 39-09-50 E 11.37 ft, S 37-07-51 E 16.36 ft, S 60-48-45 E 18.82 ft to a point being the northeastern corner of the Drew Moyes land, thence with the northern line of said Drew Moyes land S 87-52-33 W 21.19 ft; thence continuing S 87-52-33 W 360.75 ft to an old iron pipe on the eastern right of way of aforesaid Risso Lane (60 ft. public right of way at this point), thence with said right of way N 01-25-03 W 240.18 ft to an old concrete monument on said right of way, thence with said right of way, being the transition line from a 60 ft right of way to a 15 ft right of way S 88-34-57 W 30.00 ft to the point of beginning and containing 4.576 acres, according to a survey by Hanover Design Services, P.A. March 6, 1997.

TOGETHER with the rights and benefits contained in that certain Easement from the State of North Carolina, dated March 31, 1997, and recorded in Book 2171, at page 146, of the New Hanover County Registry.

Section 2. Additions to Existing Property.

(a) Additional land 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, without the consent of the Association or its Members, 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, North Carolina, Public 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 and Original Issue. There shall be four (4) classes of members and memberships: Charter, Class A, Class B, and Class C. The various rights and characteristics of said classes of membership shall be as set forth below in this Article. In consideration for the establishment of the Development and the creation of the proposed facilities, the Association shall issue and assign to Declarant Charter Membership rights for each and every membership in the Association except as set out hereafter in this Section.

The Association shall also issue 19 Class B memberships to Snows Cut Associates, LLC or its assigns representing membership regarding boat slips numbers 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151 and 152.

The Association shall also issue 36 Class B memberships to Declarant representing membership regarding boat slips numbers 25,

29, 30, 31, 35, 37, 39, 47, 48, 50, 52, 54, 58, 63, 65, 67, 69, 71, 73, 78, 81, 82, 83, 85, 87, 89, 91, 94, 99, 110, 111, 113, 114, 115, 129 and 130.

Pursuant to an agreement with said party, Snows Cut Associates, LLC shall be responsible for paying the assessments against said 36 Class B memberships as well as those against the above referenced 19 Class B memberships.

Section 2. Charter Membership. In consideration for the establishment of the Development and the creation of the proposed facilities, the Association shall issue and assign to Declarant Charter Membership rights for each and every membership in the Association except as set forth above. Charter Memberships shall be freely transferrable by Declarant without any application or approval. Upon transfer of 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: (1) a Class A, or (2) a Class B, or (3) a Class B plus a Class C Membership, depending upon the nature of the membership transferred as hereinafter described and as shown on the certificates. Each Lot sold and conveyed by the Declarant shall have appurtenant thereto either: (1) a Class A Membership which thereafter shall not be severed from said Lot but shall be sold, transferred, and assigned only together with and as an appurtenance to said Lot, or (2) a Class C membership.

Section 3. Class A Membership. A Class A Membership shall be

a membership appurtenant to the ownership of a Lot in the Development and shall not be severed from said Lot but shall be sold, transferred, and assigned only together with and as an appurtenance to said Lot. 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. Class B Membership. A Class B membership shall be a membership owned and held independent of and unrelated to any Lot in the Development. Each Class B 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 B 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 B member shall also have those common area rights and voting rights set forth below in this Article.

Section 5. Class C Membership. A Class C Membership shall be a membership appurtenant to the ownership of a Lot in the

Development, and carries with it no right whatsoever to any Boat Slip. Each Class C membership shall entitle such member to the use and enjoyment of the common areas only, as such common area rights are set forth below in this Article. Class C members shall have the same rights as Class A members except in regards to voting and the lack of any right to a boat slip. Class C members shall be responsible for Homeowner's dues in the same fashion as Class A members.

Section 6. Common Area Rights. Each member shall have a nonexclusive right and easement of enjoyment in and to the common areas subject to the right of the corporation:

1. To assign particular Class A and Class B members the right to the exclusive use and enjoyment of Boat Slips in the Marina Facility;

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 dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose,

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 7. Voting Rights. Except as specifically provided in the Bylaws of the Association, the voting rights of the members at any meeting of members shall be as follows:

- (a) Each Class A membership shall have seven (7) votes;
- (b) Each Class B membership shall have two (2) votes;
- (c) Each Class C membership shall have five (5) votes; and
- (d) Each Charter membership shall have six (6) votes.

Section 8. 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. As to all other classes of membership, there shall be no transfer, assignment, pledge, or lease of any membership or any interest therein without the prior approval of the Board of Directors following such procedure as may be prescribed in the Bylaws.

ARTICLE V

PROPERTY RIGHTS

Section 1. Ownership of Common Areas. Declarant shall convey the Common Areas to the Association prior to conveyance of any townhouse lots. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Areas (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. Owner's Easements for Ingress and Egress. Every Lot shall be conveyed with a perpetual, non-exclusive right to use any roadway which may be constructed by the Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Lot.

Section 3. Delegation of Use. Any member may delegate, in accordance with the Bylaws of the Association, his right of enjoyment to the Common Area and facilities to the members of his family, his guests, his tenants, or contract purchasers who reside on his Lot.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. 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, 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 and against the Lot to

which any Class A or Class C membership is appurtenant as provided hereinafter. 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.

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

- (a) to maintain all Common Areas;
- (b) to maintain the Marina Facility and all pilings, piers, docks 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 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 amenities, pool and clubhouse 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 community including any necessary removal and replacement of

landscaping;

(f) to provide such security devices as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals;

(g) to provide garbage removal services for all common areas and the Marina Facility;

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

(i) to 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 Corporation;

(k) 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

(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 3. Determination of Regular Assessments

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

B. The Board is specifically empowered on behalf of the

association to make and collect regular assessments to be used to replace, maintain and repair all property of the corporation including the private roads, pool, clubhouse, bulkheads, docks, piers, pilings, and other facilities. Additionally the Board is specifically empowered on behalf of the association to make and collect regular assessments to be used to replace, maintain and repair all exterior portions of the townhouse units built on said lots, however this duty shall not extend to repair of losses caused by casualty or items covered or coverable by casualty insurance. Exterior portions is defined as follows: any portion exposed to the elements. Each lot owner shall be required to keep in force a casualty insurance policy insuring the structure of the townhouse in a minimum amount as determined by the Board. Said policy shall name the Association as an additional insured. The proceeds of said policy shall be used by the Board to complete any repairs caused by casualty to the exterior portions of the townhouse first, and any remaining proceeds shall be paid to the lot owner. The Homeowners Association shall each year select the insurance agent and company to write homeowners insurance on all the residences. Each homeowner shall be required to obtain homeowners insurance each year from the agent and company selected by the Association. The Homeowners Association shall have the authority to levy assessments for such homeowners insurance as a special assessment to insure continued insurance and compliance with this provision. Assessments shall be payable periodically as determined by the Board, but no more frequently than monthly.