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FOR REGISTRATION REGISTER OF DEEDS
REBECCA T. CHRISTIAN
NEW HANOVER COUNTY NC
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DECLARATION
ELLIOTT PLACE DOCKS

RETURN TO *Ned Barnes*

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF ELLIOTT PLACE DOCKS

THIS DECLARATION, made this 6 day of Jan, 2004, by RON K. JESSUP, II,
hereinafter referred to as the "DECLARANT":

WITNESSETH:

WHEREAS, the DECLARANT is developing certain real estate located in New
Hanover County, North Carolina, which is more particularly described as follows:

All of Docks 1, 2, 3, 4, 5, 6, 8, 9 and 10 as shown on the diagram
attached to these declarations and incorporated herein by reference.

WHEREAS, the DECLARANT desires to impose the following uniform covenants,
conditions and restrictions upon dock units within the development of ELLIOTT PLACE
DOCKS.

NOW THEREFORE, Declarant hereby declares that all of the properties described
above shall be held, sold and conveyed subject to the following easements, restrictions,
covenants, and conditions, which are for the purpose of protecting the value and desirability
of the docks and which shall run with the docks and be binding on all parties having or
acquiring any right, title or interest in the real estate 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 the ELLIOTT PLACE DOCK
OWNERS ASSOCIATION, INC., a non-profit North Carolina corporation, its successors
and assigns.

Section 2. "Common Area" shall mean and refer to all real property owned or acquired by the Association for the common use and enjoyment of the Owners, together with any common area designated on each map recorded for ELLIOTT PLACE DOCKS. Common area may be conveyed to the Association as additional phases are added or otherwise. Common area shall not include any property acquired by the Association as a result of foreclosure or deed in lieu of foreclosure of an Owner's property for nonpayment of assessments, taxes or any security interest against the property or acquired in any other way, unless the Association elects to retain such property and use it as common area.

Section 3. "Declarant" or "Developer" shall mean and refer to RONALD K. JESSUP, II, his successors and assigns.

Section 4. "Development" shall mean and refer to the whole of the planned residential development to be known as ELLIOTT PLACE DOCKS which shall consist of all the real property, which has been subdivided into separate boatslips shown on maps of ELLIOTT PLACE DOCKS, referred to hereinabove, the common elements, plus the improvements to the common elements, as described hereinabove.

Section 5. "Slip" shall mean and refer to any of the numbered slips on each map of property within ELLIOTT PLACE DOCKS as is recorded in the New Hanover County Registry, with the exception of the common areas.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to those lots in Elliott Place designated as Lots 1, 2, 3, 4, 5, 6, 8, 9 and 10 as shown on that plat recorded in Book _____, Page _____, and Book _____, Page _____, but excluding those having such

interest merely as security for the performance of an obligation.

Section 7. "Properties" shall mean and refer to that certain real property hereinabove described, and such phases or additions thereto as may hereafter be brought within the jurisdiction of the Association by Declarant.

ARTICLE II

PROPERTY RIGHTS

Section 1. OWNERS' EASEMENTS OR ENJOYMENT: Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area;
- B. The right of the Association to limit the number of guests of members;
- C. The right of the Association to suspend the voting rights and right to use of the recreational Area by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations;
- D. The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. Except for the grant or conveyance of a standard utility easement in order to obtain utility service to the common area, no such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded, provided, however, that the Association has the authority to dedicate the streets to the public. With respect to a standard utility easement permitting utility service to the common area, the Board of Directors may authorize the officers to execute such a grant or conveyance of the standard utility easements to the utility company without a vote of the membership

of the association;

- E. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area;

Section 2. DELEGATION OF USE: Any Owner may delegate, in accordance with the By-Laws but subject to the provisions of this document, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

HOMEOWNERS ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Class of Membership: The Dock Association shall have one class of member who shall be all owners.

Section 2. Membership and Voting. Every person who is the record owner of a fee or undivided interest in any boatslip that is subject to this Declaration shall be a member of the Association and be deemed to have a membership in the Association. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation and in giving of a security interest shall not terminate the Owner's membership in the Association. Membership shall be appurtenant to and shall not be separated from ownership of any slip. Each owner has the duty to comply with and obey these Articles, the Bylaws of the Association and the Rules and Regulations of the Association.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF

ASSESSMENT: Each Owner by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- A. Annual assessments or charges; and
- B. Special assessments for capital improvements, maintenance and insurance in connection with common area property, such assessments to be established and collected as hereinafter provided; and a pro rata share of ad valorem taxes levied against the common area.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the persons who were the Owner of such property at the time when the installment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them; provided, however, such assessment shall always be a lien upon the land until paid, and no sale shall extinguish such assessment, except a foreclosure sale.

It is expressly provided, however, that in consideration of the Declarant's prior construction of the amenities and improvements on the real estate which is to constitute the common area in this development, that the DECLARANT shall be exempt from and shall not have to pay assessments on any lots owned by it within this development .

Section 2. **PURPOSE OF ASSESSMENTS:** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the owners of the properties, for the improvements and maintenance of the common area, to include but not limited to maintenance of the roads as shown on that

map of ELLIOTT PLACE DOCKS, as hereinabove referenced and to obtain and pay for insurance where authorized or required by this document, the corporate charter, the Bylaws, Action of the Board of Directors or members of the association.

Section 3. The Board of Directors shall fix the amount of the annual assessment against each slip at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in annual installments or to divide the annual assessment and have it paid in periodic installments throughout the year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid and for what period.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS: In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. SPECIAL ASSESSMENTS FOR INSURANCE: As an additional annual assessment, the Association shall levy against the owners equally an amount sufficient to pay the annual cost of all public liability and common area insurance

premiums for the Association and its members, officers, Directors and employees. The Board of Directors (or its designee) shall, on behalf of the Association, as its common expense and at all times, keep the common property insured against loss or damage by fire or other hazards normally insured against at 100% of replacement costs and other risks including public liability insurance, in such terms and in such amounts as may be reasonably necessary from time to time to protect the common property on behalf of the Association. As a part of the annual assessments the Association shall also obtain and pay for such insurance policies and bonds that the Directors of the Association deem necessary or advisable including, but not limited to, officers' and Directors' liability coverage, fidelity bonds, casualty or hazard insurance or any other insurance for the Directors and officers of the Association or otherwise.

Section 6. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER ARTICLE IV FOR MEMBERSHIP: Written notice of any meeting called for the purpose of taking an action authorized under Article IV for the membership shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. UNIFORM RATE OF ASSESSMENT: Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a

monthly, annual or other basis as the Homeowners Association determines, save special assessments levied against any lot for casualty insurance as above required.

Section 8. EFFECT OF NON-PAYMENT OF ASSESSMENTS-REMEDIES OF THE ASSOCIATION: Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of fourteen percent (14%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

Section 9. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION: Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of three (3) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing government authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

Section 10. SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage upon the property. Sale or transfer of any Lot shall not effect the assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure of a deed of trust or mortgage, a deed in lieu of foreclosure, or any other proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ASSIGNMENT OF LIMITED COMMON AREA

Section 1. Assignment. Each slip owners is hereby the right to the exclusive use of a particular boatslip. Each Owner is assigned the right to the exclusive use of the slip all as set forth on the exhibit attached hereto and made a part hereof by this reference. East Owner, by the acceptance of a deed therefore, acknowledges and agrees that such Owner shall have only the right to the exclusive use of the boat slip assigned by the Association as set out in the exhibit attached. In addition, the owner shall have the right to use, in common with others, the Limited Common Area providing access to the boatslip assigned to the Owner. Each owner of a boatslip acknowledges and agrees that such Owner shall have not right to the use of any of the other Limited Common Areas except such Limited Common Areas providing access to the boat slip assigned as described on the exhibit attached nor shall any Owner have any right to use any boat slip other than the boat slip as assigned on the exhibit attached.

Section 2. Reassignment of Boat Slip. There shall be no reassignment or

change in boatslip for which the right to use has been assigned to a particular lot as shown on the exhibit attached. No slip can be reassigned exclusive of the lot to which it is assigned.

Section 3. Appurtenance. The right to use of the Limited Common Area and the boat slip assigned to its particular lot as set out in the exhibit attached shall be an appurtenance to the Lot to which said boat slip is assigned as set out in the Exhibit and shall not be separated from said Lot. Any sale, conveyance or other transfer of a fee simple title to a Lot shall be deemed to include all of the Owner of such Lot' s interest and right in the boat slip and Limited Common Area, whether or not specifically so expressed in such deed, and in no event shall the ownership and right of use of the boat slip or Limited Common Area be separated from the Lot to which they have been assigned under this Declaration.

ARTICLE VI

INSURANCE AND CASUALTY LOSS

Section 1. Insurance. The Board of Directors of the association or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements of the Limited Common Area for which it has responsibility. Such insurance shall cover loss and damage by fire and other hazards, including extended coverage, vandalism, and malicious mischief and shall be in an amount sufficient to cover the full replacement cost, subject to a reasonable deductible as determined by the Board of Directors, of any repair or reconstruction on the event of damage or destruction from any such hazard. Alternatively, the Board of Directors of the Association may purchase "all-risk" coverage in like amounts.

The Board of Directors of the association may, in its discretion, obtain a public liability policy applicable to the Limited Common Areas, covering the said association and its members for all damage or injury caused by the negligence of said association or any of its respective members or agents, and if reasonably available, directors' and officers' insurance with such limits as the Board of Directors may determine.

Premiums for all insurance shall be a common expense for the association. The Association, by and through its Board of Directors, may obtain from time to time, such other types of insurance providing coverage in such amounts as it seems appropriate.

ARTICLE VII

EASEMENTS

Section 1. Easement for Entry. Notwithstanding anything to the contrary contained elsewhere in this Declaration, the Association shall have an easement to enter on or upon the Limited Common Area and boatslips for emergency, security, safety and for other purposes reasonably necessary for the proper maintenance and operation of the Limited Common Area and boatslips, which right may be exercised by the Association, its managers and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. This right of entry easements shall also include the right of the Association to enter into the Limited Common Area and boatslips for maintaining, repairing and replacing same and enforcing its rules and regulations regarding the use of the Limited Common areas and boatslips.

Section 2. Emergency. There is reserved hereto an easement for all firemen, policemen, ambulance personnel, and similar emergency personnel to enter onto any of the Limited Common Area and boatslips in the performance of their respective duties.

ARTICLE VIII

RIGHTS RESERVED TO ASSOCIATION

In addition to and not in lieu of any other rights reserved or granted to the Association on this Declaration, its Articles of Incorporation or its By-Laws, it shall have the right to:

1. Adopt rules and regulations, from time to time, regarding and regulating the use of the Limited Common Area and the boatslips.

2. Suspend the voting rights of a Lot Owner and the right of an Owner to use the Limited Common Area for any period during which any assessment levied by the Association against his slip which is hereby provided remains unpaid; and, for a reasonable period of time for an infraction of this Declaration, or the By-Laws or rules and regulations of the Dock Association.

3. Borrow money for the purpose of improving the Limited Common Area or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan or mortgage conveying all or a portion of the Limited Common Area.

4. Grant easements for utility purposes for the benefit of lots located in Elliott Place under, along and through the Limited Common Area; provided, however, that no such grant of easement shall have a material adverse effect on the use, enjoyment or value of any Lot or Limited Common Area.

ARTICLE IX

ARCHITECTURAL STANDARDS- LIMITED COMMON AREA AND BOATSLIPS

Section 1. Architectural Standards and Architectural Standards Committee.

The Board of Directors of the Association shall establish an Architectural Standards Committee (" the Committee"), which shall be comprised of three (3) Members of the Association appointed by the Board of Directors from time to time. Those persons services as directors of the Board of the Association may also serve as members of the Committee.

Section 2. Construction. No Owner shall perform or cause to be performed any construction or install any additional improvement, whether of a temporary or permanent nature on any party of the Limited Common Area on which such owner has a right of use or on the Owner' s boatslip assigned to such Owner until the approval of the Committee has been obtained.

Section 3. Exclusive Jurisdiction. The Committee shall have exclusive jurisdiction over all original construction of Improvements and later changes or additions after approval thereof together with any modifications, additions, or alterations subsequently to be constructed on the Limited Common Area or the boatslips or made to any improvements initially approved. The Association shall prepare, by and through its Board of Directors, rules and regulations governing and regulating the use of the boatslips and the Limited Common Area which such rules and regulations shall also promulgate architectural standard guidelines (" guidelines") and application and review procedures (" procedures"). The guidelines and procedures shall be those of the Association and the Association shall have the sole and full authority to prepare and to amend the guidelines from time to time through its Board of Directors. The Committee shall make the guidelines and procedure available to owners, builders, and developers who seek to engage in the development of or construction upon the Limited Common Area and

boatslips and show shall conduct their operations strictly in accordance therewith.

Section 4. Approval of Plans. The Committee shall have the absolute and exclusive right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions with any of the provisions of these Declarations and the guidelines; if the design or location upon the Limited Common Area or boatslips of the proposed improvements are not in harmony with the general surroundings or adjacent structures; if the plans or specifications or detail, or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the real property subject to this Declaration or Owners thereof.

Section 5. Time Period. The Committee shall approve or disapprove plans, specifications and details submitted in accordance with its procedures within thirty (30) days from the receipt thereof and the decisions of the Committee shall be final and not subject to appeal or review. Provided, however, that plans, specifications and details revised in accordance with the Committee recommendations may be resubmitted for determination by the Committee. In the event that the Committee fails to approve or disapprove plans, specifications or details within thirty (30) days after submission of the same to the Committee, approval, for the purposes of this Section shall deem to have been given by the Committee.

Section 6. Inspections. The Committee, or its agent, shall have the right to inspect all construction to ensure that it is performed in strict accordance with the approved plans, specifications and details. Upon completion of the construction in accordance with the approved plan, specifications and details, the Committee may issue a certificate of completion to the owner.