

17.50

BOOK PAGE

1192 0452

RECORDED AND VERIFIED
REBECCA P. TUCKER
REGISTER OF DEEDS
NEW HANOVER CO. NC

SEP 21 4 05 PM '81

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
SCHLOSS ESTATE BOATOWNERS ASSOCIATION

THIS DECLARATION, made the 17th day of September, 1981,
by DALLAS HARRIS REAL ESTATE-CONSTRUCTION, INCORPORATED, a North
Carolina corporation, hereinafter referred to as "DECLARANT";

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain real property
in the Town of Wrightsville Beach, County of New Hanover, State of
North Carolina, upon which Declarant has constructed or plans to
construct a private boat dock facility along the water front area
to be known as Schloss Estate Boat Docking Facility, as shown on
the map entitled "DOCKING SPACES--SCHLOSS ESTATES BOATOWNERS ASSO-
CIATION", a copy of which map is hereto attached as Exhibit "A"
and incorporated herein fully by reference; and

NOW, THEREFORE, Declarant hereby declares that all of
the properties hereinafter defined comprising the real estate and
boat docking facility shown and described on the plat entitled
"Docking Spaces--Schloss Estates Boatowners Association", hereto
attached as Exhibit "A" shall be held, sold and conveyed subject
to the following easements, restrictions, covenants and condi-
tions, all of which are for the purpose of enhancing and protect-
ing the value, desirability and attractiveness of the boat docking
facility, and all of which easements, covenants, restrictions and
conditions shall run with the land and shall be binding upon par-
ties having or acquiring any right, title or interest in the de-
scribed premises or any part thereof, and shall inure to the bene-
fit of each member of the Association.

ARTICLE I.

29

DEFINITIONS

Section 1. ASSOCIATION shall mean and refer to Schloss
Estate Boatowners Association, an unincorporated association of
the owners of Schloss Estate Boat Docking Facility.

Section 2. BOAT DOCKING FACILITY shall mean and refer
to the pier, boat slips and all facilities and appurtenances asso-
ciated with Schloss Estate Boat Docking Facility as shown on Ex-
hibit "A" hereto attached.

LAW OFFICES
BURNET, BURNET, BAREFOOT & BAIN
110 NORTH FIFTH AVENUE - POST OFFICE BOX 88
WILMINGTON, N. C. 28402

1192 0453

Section 3. THE PROPERTIES shall mean and refer to that certain real property and Boat Docking Facility shown on the plat entitled "Docking Spaces--Schloss Estates Boatowners Association", hereto attached as Exhibit "A".

Section 4. COMMON AREA shall mean all the area designated as "Common Area" on the map of The Properties hereto attached as Exhibit "A".

Section 5. DOCKING SPACE shall mean the space in and above the water adjacent to Banks Channel for the docking of a boat as shown diagrammatically on Exhibit "A" hereto attached. The terms "Boat Slip" and "Docking Space" shall have the same meaning and may be used interchangeably.

Section 6. MEMBERSHIP shall mean and refer to the rights, benefits, duties and obligations incidental to the Association, which shall inure to the benefit of and burden each member of the Association.

Section 7. MEMBER shall mean and refer to every person or entity who has a membership in the Association.

Section 8. DECLARANT shall mean and refer to DALLAS HARRIS REAL ESTATE-CONSTRUCTION, INCORPORATED, its successors and assigns.

ARTICLE II.

MEMBERSHIP

Section 1. NUMBER OF MEMBERS. There shall be seven members of the Association which shall equal the number of boat-slips constructed.

Section 2. DEED TO MEMBERSHIP. Each initial membership in the Association shall be evidenced by a deed from the Declarant which shall convey to the member an undivided one-seventh (1/7) interest in all common areas and facilities of The Properties, together with and subject to all rights, privileges, duties and obligations of membership in the Association. All unconveyed memberships and the rights and privileges appurtenant thereto shall be deemed to be owned by Declarant until a deed for the same is recorded.

Section 3. TRANSFER OF MEMBERSHIP. Membership in the Association shall be appurtenant to and may not be separated from the ownership of each one-seventh (1/7) undivided interest in The Properties. Memberships shall not be transferable except as an incidence or appurtenance to the transfer of an undivided one-seventh (1/7) interest in the real estate and common facilities. Every conveyance or transfer of ownership of an undivided one-seventh (1/7) interest in The Properties, whether by deed, will or inheritance, shall be conclusively presumed to include the transfer and conveyance of the appurtenant membership in this Association, whether or not reference to said membership is contained in the deed, will or other muniment of title transferring the property.

Section 4. ASSIGNMENT OF BOAT SLIPS. The Association shall assign a boat slip for each membership. The boat slips so assigned may be exchanged among the members of the Association.

Section 5. RIGHTS OF MEMBERS.

1. Each member of the Association shall have the exclusive right, subject to the provisions hereof and subject to the By-Laws and Rules and Regulations promulgated by the Board of Directors to occupy, possess and lawfully use the boat slip assigned to such member.
2. Each member shall have the right and easement of enjoyment in and to the common area subject to the right of the Association:
 - (a) To limit the number of guests of members;
 - (b) In accordance with its Articles and By-Laws to borrow money for the purpose of improving the properties, common area and facilities;
 - (c) To suspend all rights of any member for any period during which any dues or assessments against such member remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published Rules and Regulations; and to lease or otherwise lawfully use such rights during any such period of suspension;

Section 6. VOTING RIGHTS. The Association shall have two (2) classes of voting rights:

CLASS I. All members with the exception of the Declarant shall have Class I voting rights which shall entitle such member to one vote in the affairs of the Association for each membership owned. When more than one person holds an interest in any membership, the vote for such membership shall be exercised as they among themselves shall determine, but in no event shall more than one vote be cast with respect to any such membership.

CLASS II. The Declarant shall have Class II voting rights, which shall entitle the Declarant to three (3) votes for each membership owned. Class II voting rights shall cease and be converted to Class I voting rights on the happening of either of the following events, whichever occurs earlier:

- (a) When the total Class I votes outstanding exceeds the total Class II votes outstanding; or
- (b) On January 1, 1985.

ARTICLE III.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Each owner of each membership agrees to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements; such assessments to be fixed, established and collected from time to time as hereinafter provided, shall be a charge on the membership and shall be a continuing lien upon the undivided interest of such owner in The Properties. 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 when the assessments fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purpose of (1) promoting the recreation, health, safety and welfare of the members and their property; (2) the enforcement of these Covenants and the Rules of the Association promulgated by the Board of Directors; and (3) in particular for the improvement and maintenance of the properties, services and dock facilities devoted to this purpose and related to the use and enjoyment of the common area.

Section 3. DETERMINATION OF ASSESSMENTS.

- A. The Board shall determine from time to time the sum or sums necessary and adequate for the common expenses. At the annual meeting of the Association, such budget shall be submitted to the members for approval. As approved, the budget shall constitute the basis for all regular assessments for common expenses against owners of memberships, which assessments shall be due and payable periodically as determined by the Board. Common expenses shall include expenses for the operation, maintenance, repair or replacement of the common area and facilities including the boat slips, all insurance premiums and expenses relating thereto, and any other expenses designated as common expense from time to time by the Board of Directors of the Association.
- B. The Board is specifically empowered on behalf of the Association to make and collect assessments and to maintain, repair and replace the common area and facilities, including the docks and boat slips. Assessments shall be payable periodically as determined by the Board.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENT. 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 in part, the cost of any construction or reconstruction,

unexpected repair or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, or defraying in whole or in part the cost of any dredging; provided that any such assessment shall have the approval of two-thirds (2/3) of the total votes entitled to be cast in person or by proxy at a meeting duly called for this purpose.

Section 5. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS, DUE DATES. The annual assessments provided for herein shall commence as to each membership on the first day of the month following its acquisition by a member; provided, however, that no assessments shall be made upon memberships for docking spaces until after construction of the tie pilings for those docking spaces is completed. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each membership at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner of a membership. The due dates shall be established by the Board of Directors. The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments against a specified membership have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 6. ASSESSMENTS FOR REPAIRS OF DAMAGE CAUSED BY FAULT. If a member, assignee or lessee, or one of their guests, damages or destroys by his or her fault any of the property in the common area including the docks, boat slips and other facilities, the Board shall levy a special assessment upon the owner of that membership for the full cost of repair or replacement of such damage or destruction.

Section 7. EFFECT OF NON-PAYMENT OF ASSESSMENTS - REMEDIES OF THE ASSOCIATION. Any assessment or any portion thereof which is not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall become a lien on such membership and bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the real estate and the membership appurtenant thereto. Interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessments. 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 membership.

Section 8. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or pledge of the membership. Sale or transfer of any membership shall not affect the assessment lien. However, the sale or transfer of any membership which is 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 assessments 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.

ARTICLE IV.

MAINTENANCE

In addition to maintenance of the common area, the Association shall provide maintenance of each boat slip in the properties, and shall have the right of ingress and egress to maintain, repair or replace all or any portion of such slip of common docks and limited access docks at the discretion of the Board or designee of the Board. The cost of such maintenance repair or replacement shall be added to and become a part of the total annual assessment for which all memberships are proportionately liable.

ARTICLE V.

ARCHITECTURAL CONTROL

Section 1. IMPROVEMENTS AND ALTERATIONS, ETC.

No building, fence, wall, sign or other structure shall be commenced, stored, erected or maintained upon the common area or other property of the Association, nor shall any addition to or change or alteration there be made until the plans and specifications showing the nature, kind, shape, height, materials, location of said change shall have been submitted to and approved in writing as to the harmony of external design and location in relation to the surrounding area by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives of the Board.

Section 2. FLOATING DOCK. Subject to the provisions of Section 1 above, any member shall have the right to construct a floating dock adjacent to his slip. The repair and maintenance of such floating dock shall be the sole responsibility of the member or members constructing the same. The Association shall have the right, but not the obligation, to repair and maintain any such floating docks should the member or members constructing the same fail to do so, and any costs involved shall be immediately repaid to the Association by such member or members. If not paid in full when due, such costs shall be treated as a special assessment as provided in Section 6 of Article III, and shall be collected accordingly.

Section 3. DOCK BOXES. There shall be no more than one (1) dock box per slip of such size, design and construction and in such location, as the Board of Directors shall determine. No removal or change in location, size, design or construction will be made without the written consent of the Board of Directors; provided, that any such approved removal or change shall be at the expense of the person seeking such removal or change.

ARTICLE VI.

USE RESTRICTIONS

Section 1. RULES AND REGULATIONS. The Board of Directors of the Corporation shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the properties including boat slips.

Section 2. USE OF PROPERTIES, ETC. No portion of the properties, common area or any boat slip may be used for any commercial purpose.

Section 3. QUIET ENJOYMENT. No obnoxious or offensive activity shall be carried on, in or upon the properties, the common area or any boat slip, nor shall anything be done which may be or may become a nuisance or annoyance to any member, assignee or lessee.

ARTICLE VII.

EASEMENTS

Section 1. ACCESS EASEMENTS. The Declarant hereby grants to members of the Association a perpetual easement and right-of-way for access to and from the boat dock facilities over the common areas as shown on the plat thereof hereto attached as Exhibit "A".

Section 2. UTILITY EASEMENTS. The Association shall have the right to grant and establish over and across the properties and common areas such easements and rights-of-way as may be required for public utilities.

ARTICLE VIII.

GENERAL PROVISIONS

Section 1. ENFORCEMENT. The Association, or any member, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by or under the provisions of this Declaration. Failure of the Association or any member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. SEVERABILITY. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 3. DURATION. The covenants, conditions and restrictions of this Declaration shall run with and bind the properties, common area and boat slips, and shall inure to the benefit or be enforceable by the Association, or any member, their respective legal representatives, heirs, successors and assigns subject to this Declaration, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time such covenants shall be automatically extended for successive periods of ten (10) years each.

Section 4. AMENDMENT OF DECLARATION. This Declaration may be amended by the vote of not less than two-thirds (2/3) of the total membership of the Association, cast by person or by proxy at a meeting duly held in accordance with the By-laws. All amendments shall be certified by the Secretary of the Association and shall be effective from the date of recording of the amendment as certified, in the Office of the Register of Deeds of New Hanover County. It shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any membership in the Association; provided, however, that in no event may this Declaration be amended so as to deprive Declarant of any rights herein granted or reserved unto Declarant.

ARTICLE IX.

INSURANCE

Section 1. The Board of Directors on behalf of the Association, as a common expense shall at all times keep the property (except personal property of a member) insured against loss or damage by fire or other hazards insured against, and other such risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect The Properties, common area and boat slips, which insurance shall be payable in case of loss to the Association for all members. The Association shall have the sole authority to deal with the insurer in the settlement of claims.

Section 2. Such insurance shall be obtained without prejudice to the right of each member to insure his personal property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by members or their mortgagees.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized officers and its corporate seal to be hereunto affixed, all the day and year first above written.



[Signature]
Secretary

DECLARANT:

DALLAS HARRIS REAL ESTATE-
CONSTRUCTION, INCORPORATED

By *[Signature]*
President

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

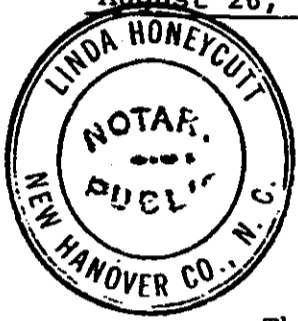
I, a notary public in and for the state and county aforesaid, do hereby certify that CASSANDRA L. WILLIAMS personally appeared before me this day and acknowledged that she is the Asst. Secretary of DALLAS HARRIS REAL ESTATE-CONSTRUCTION, INCORPORATED, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her self as its Asst. Secretary.

WITNESS my hand and notarial stamp or seal, this the 17th day of September, 1981.

My Commission Expires:

August 26, 1986

Linda Honeycutt
Notary Public



The foregoing certificate of LINDA HONEYCUTT a notary public, is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

REBECCA P. TUCKER,
Register of Deeds for
New Hanover County

By *Rebecca Tucker*

