

BK 1403

pg 1

Important

DECLARATION OF RESTRICTIVE COVENANTS

OF  
OYSTER HARBOUR

REF: Russell Davis  
TOTAL 20 REV 38 TC# 38  
REC# 60 CK AMT 60 CK# 0453  
CASH 5 REF BY

KNOW ALL MEN BY THESE PRESENTS, the undersigned Declarant of Oyster Harbour Subdivision of Lockwood Folly Township, Brunswick County, North Carolina, does hereby adopt and declare the following actions by setting its hand and seal hereto;

WITNESSETH:

THAT WHEREAS, the Declarant of Oyster Harbour Subdivision (herein "DECLARANT") filed a Declaration of Restrictive Covenants of Oyster Harbour Subdivision in Book 1357 at Page 1097 (herein "RESTRICTIONS") of the Brunswick County Registry; and

WHEREAS, said RESTRICTIONS provided that the DECLARANT reserves the right to amend the RESTRICTIONS from time to time without joinder of any other person; and

WHEREAS, the DECLARANT deems it expedient to amend said RESTRICTIONS as follows:

NOW THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that all of the property described on recorded plat(s) in Map Cabinet 23 at Page(s) 154-158 in the Brunswick County Registry and any other lots or parcels of land the conveyance of which makes specific reference to this Declaration of Restrictive Covenants are made subject to these Restrictions and the Declaration and 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 OYSTER HARBOUR as it now exists and is hereafter expanded and that such easements, restrictions, covenants and conditions shall burden and run with said property and be binding on all parties now or hereafter owning said real property and their respective heirs, successors and assigns, having any right, title or interest in the properties now or hereafter subjected to these Restrictions and the Declaration of Covenants, Conditions and Restrictions of Oyster Harbour Planned Community, as amended, previously filed (herein the "DECLARATION") or any part thereof, and shall inure to the benefit of each owner thereof and their respective heirs, successors and assigns.

PROPERTY SUBJECT TO THESE RESTRICTIONS AND THE DECLARATION

AND ADDITIONS THERETO

1. Existing Property. The real property (herein the "PROPERTY") which is, and shall be held, transferred, sold conveyed and occupied subject to these Restrictions and the Declaration, irrespective of whether there may be additions thereto as hereinafter provided, is located in Brunswick County, North Carolina, and is shown on maps recorded in Plat Cabinet 23, Pages 154-158 in the Office of the Brunswick County Register of Deeds.
2. Additions to Existing Property. Additional property may be brought within the scheme of these Restrictions and the Declaration and the jurisdiction of the Oyster Harbour Homeowners Association, Inc. (herein "Association"):
  - (a) Declarant reserves the right to subject to the Declaration and the Restrictions other certain contiguous property that it owns, which may be developed into tracts and roadways and may later made a part of OYSTER HARBOUR. Declarant shall have and hereby reserves the right and option, from time to time and for so long as the Declarant owns any contiguous property, to subdivide all or any portion of the same into additional tracts by the filing of a plat designating such

tracts on the records of Brunswick County, North Carolina, and upon any such filing the number of tracts located on the property shall be increased to include such additional tracts.

- (b) Additional residential property and common area, consisting of not more than five hundred (500) acres, outside of the area may be annexed to the properties and brought within the scheme of these Restrictions and the Declaration and the jurisdiction of the Association in future stages of development without the consent of the Association or its members; provided, however, that said annexations, if any, must occur within ten (10) years after the date of this instrument.
- (c) The additions authorized under subsections (a) and (b) shall be made by filing of record Supplementary Declaration of Restrictive Covenants of OYSTER HARBOUR and by filing of record Supplementary Declarations of Declaration of Covenants, Conditions and Restrictions of OYSTER HARBOUR and OYSTER HARBOUR Homeowners Association, Inc., with respect to the additional properties which shall extend the scheme of these Restrictions and the Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to assessments for their just share of the Association's expenses. Said Supplementary Declarations and Restrictions may contain such complementary additions and modification of these Restrictions and the Declaration as may be necessary.

### GENERAL USE RESTRICTIONS

Declarant does hereby covenant and agree with all persons, firms or corporations hereafter acquiring title to any portion of the Property that the Property is hereby subject to these Restrictions as to the use thereof and do agree, publish and declare that the deeds hereinafter made by it to purchasers of the Property shall be made subject to the Declaration and to the following Restrictions:

1. Except as otherwise provided in these Restrictions, the lots shall be used for residential purposes only, and no structure shall be erected, placed, altered or permitted to remain on any lot other than one detached, single-family dwelling and related structures incidental to the residential use of the lot, such as garages and boat houses, which otherwise comply with these Restrictions, except that Declarant reserves the exclusive right to construct a roadway over any lot owned by it in order to grant access to other property acquired by Declarant and in such cases the remainder of any such lot not used for the roadway shall still be subject to these Restrictions.
2. Each single-family dwelling shall have an enclosed, heated living area (exclusive of open porches, garages, and other unheated spaces) not less than Two Thousand Four Hundred (2,400) square feet if fronting on the waterfront and One Thousand Eight Hundred (1,800) square feet otherwise. The design, location, and construction of all improvements on each lot (regardless of when such improvements are made) and the landscaping of each lot must be approved in advance by the Architectural Review Committee of Oyster Harbour of Oyster Harbour Homeowner's Association, Inc. (hereinafter referred to as the "Committee"), which Committee is established pursuant to the Declaration.
3. All improvements to the lot must comply with Brunswick County setback requirements or those set out in the recorded plat.
4. More than one lot (as shown on said plat(s)) or portions thereof, may be combined to form one or more lots by (or with the written consent of) Declarant, its successors and assigns. No lot may be subdivided by sale or otherwise, except by (or with the written consent of) Declarant, its successors and assigns. Upon combination or subdivision of lots, the building line requirements prescribed herein shall apply and the easements reserved herein shall be applicable to the rear, side and front lot lines of such lot as combined or subdivided. The resulting building site and structures erected thereon must otherwise comply with these Restrictions and the new property line of the resulting building site shall be used to compute the set-back lines as set forth herein.

5. All connections of private driveways to OYSTER HARBOUR road system, and all connections of private easements and right-of-ways to that road system shall be constructed and maintained in accordance with the rules, regulations and specifications as approved by the Committee.
6. There shall be no signs, fencing, or parking permitted within the road right-of-way.
7. No building, fence, wall, pool, outbuilding, driveway, or any other accessory feature to the dwelling or any other structure upon any lot shall be commoned, erected, placed, maintained or altered on any lot or combination of contiguous lots until the Complete Construction Plans (hereinafter "Plans") are approved in writing by the Committee or its designated agents. The Committee's refusal or approval of Plans may be based upon purely aesthetic considerations, which in its sole discretion the Committee shall deem sufficient, but approval shall not unreasonably be withheld. One copy of all Plans and related data shall be furnished to the Committee for its records. If no action is taken by the Committee within forty five (45) days after Plans are submitted to it, the owner may proceed to build without approval.
8. Construction of new residential buildings only shall be permitted, it being the intent of this covenant to prohibit the moving of any existing building or portion thereof on a lot and remodeling or converting the same into a dwelling unit in this Planned Community excepting however, Declarant's mobile offices provided for hereinbelow.
9. With the exception of construction which is interrupted or delayed due to physical damage to the work in progress (such as damage due to fire, lightning, windstorm, hail, riot or civil commotion, explosion, or theft), any dwelling constructed upon a lot must be completed within one (1) year subsequent to commencement of construction, except with the written consent of Declarant, its successors or assigns, or, if the Declarant so designates, by the Committee. The normal period of completion ~~time for outbuildings or~~ other improvements shall be presumed to be four (4) months from the issue date of the building permit. In the event that completion of the dwelling, outbuildings, or other improvements on any lot is not completed within one year, and it is determined that construction progress has diminished to such an extent that completion of the dwelling, outbuildings, or other improvements is unlikely within 120 days, the Association will be advised of this determination. The Association shall then have the right to give notice to the owner that the owner has the obligation, within 30 days, to complete the removal of all the construction work in progress, including without limitation, the foundation and all building improvements and all stored building materials, and fill and grade the lot so that it is restored to its natural grade level, and the Association shall have the right to undertake this work.
10. No trailer, truck, van, modular home, mobile home, tent, camper, barn, garage, or other outbuilding or temporary structure parked or erected on lots in this Planned Community shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence; provided, however, that this prohibition shall not apply to shelters used by the contractors during the construction of the main dwelling house, it being clearly understood that these temporary shelters will not be permitted to remain on any lot after completion of construction. The Committee shall have the right to approve or disapprove these temporary construction shelters or vehicles. The Committee, upon approval of a temporary construction shelter or vehicle, will issue a letter stating the length of time such shelter will be <sup>permitted</sup> allowed to remain upon such lot and where such shelter is to be located upon such lot.
11. All homes constructed in OYSTER HARBOUR must be supplied with water for normal domestic use from individual privately drilled wells, or from a public utility company, if available. Each individual owner shall locate the well drilled on such owner's lot so as to comply with all the governmental regulations regulating the minimum distance between such well and septic fields proposed or approved for owner's lot and all lots adjoining such owner's lot. Before drilling a well, each owner must submit a site plan locating the proposed building site, drainage and repair septic field and well site.
12. Exposed exterior walls composed of the following materials shall be prohibited from OYSTER HARBOUR: concrete block, imitation asphalt brick siding, imitation asphalt stone siding, tarpaper. *vinyl siding.*

13. Declarant shall be permitted to erect one mobile office on any lot that it owns for the purpose of maintaining a sales information center and construction office.
14. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No animals, reptiles or poultry of any kind, except dogs and cats and other indoor household pets. In addition, all barns, fences, outbuildings and structures of any kind must be approved in writing by the Committee prior to commencement of construction thereof. Each owner must see to it that all of the owner's dogs are kept on the owner's property unless leashed. No dogs shall be permitted to roam the property and the Association may have strays and dogs that are not leashed and are found off their owner's lot picked up by governmental authorities. The throwing or dumping of trash, garbage, and waste materials shall not be permitted. The interference of any stream or future waterways so as to cause pollution or stagnation in these waterways is prohibited. There shall be no excavation which does not pertain to the building or construction of a home. Bottled gas containers and oil tanks shall be screened from public view. There shall be no above ground swimming pools, unless approved by the Committee.
15. No portion or part of any lot shall be used or maintained as a dumping ground for rubbish or other refuse. Trash, garbage, or other waste shall not be kept, except in sanitary containers screened from view from all roads, all other lots, and from the Common Property that the Declarant, prior to the sale of such lot, may use portions of such lot as a burial pit in accordance with governmental regulations.
16. In addition to the easements that are shown on the recorded plats of OYSTER HARBOUR, easements seven and one-half (7.5) feet in width along the side and rear property lines of all lots are reserved by Declarant for installation, repair, replacement and maintenance of utilities and drainage, including the right to keep said easements free and clear of all obstructions. An easement of fifteen (15) feet is reserved for such purposes along the front property lines of all lots. In the event the rear property line of a lot is not a common line with the rear property line of another lot in Oyster Harbour, then in such event the utility and drainage easement along the rear property line of such lot shall be fifteen (15) feet in width. As between the easements reserved by these Restrictions and the easements that are located in the same areas as shown on the recorded maps, the easements that are greater in width shall be the easements that are in effect.
17. Declarant reserves a temporary construction easement of thirty-five (35) feet in width along both sides and running parallel to streets or roads, which easements shall expire eighteen months after the particular road construction commences, or upon the acceptance of such streets or roads for maintenance by governmental authority. No outside clotheslines shall be permitted. No satellite dishes shall be permitted unless concealed from view from all lots and open spaces. The design of such enclosures must be approved by the Committee prior to erection. Mailboxes shall be of a design, color and choice of materials as designated by the Declarant or, if the Declarant so designates, by the Committee, and may not violate North Carolina Department of Transportation standards or US Postal Service regulations.
18. There shall be no junk automobiles, junk of any sort, unserviceable vehicles, or salvage stored or placed or allowed to remain on or in any portion of this Planned Community. Unless located within enclosed garages, no large boat and/or boat trailer (over 28 feet in length), travel trailer, motor home, tractor trailer truck, or any other such vehicle shall be kept or maintained or located upon any lot unless and except with prior approval of the Committee. Other boats and/or boat trailers (less than 28 feet in length) must be stored behind the building set back line. No vehicles that are disabled or under repair shall be kept upon any lot unless located within enclosed garages. Unlicensed automobiles, including antique cars, if present must be stored out of sight in a garage. Large trucks shall not be parked on a regular basis within this Planned Community. No lot shall be used for storage of building materials prior to the issuance of the building permit for the Primary Residence. Large truck shall be defined as any non-passenger vehicle larger than a pick-up truck.
19. No billboards or signs of any description shall be displayed upon any lot with the exception of those approved by the Declarant or if the Declarant designates, by the

30 ft set back  
on the water

Committee, the Declarant reserves the right to place and maintain appropriate development signs at the entrance to this Planned Community. All sign colors must be approved by Declarant, or if Declarant so designates, by the Committee. Declarant also reserves the right to erect and maintain signs designating streets, boat landings, recreational areas, and any other sign that will aid in the development of OYSTER HARBOUR.

20. Except within the building site or within 20 feet of the main dwelling, no trees of any kind in excess of 6 inches in diameter at ground level may be removed from any lot without " prior approval of the Committee.
21. Declarant, or its successors and assigns, will deed a lot or right of way to the Association which will provide access for lot owners to a community pier, boat ramp, community beach or other amenities which will be constructed by the Declarant and maintained by the Association. Notwithstanding anything herein to the contrary, Declarant will also deed to the Association at least one (1) acre fenced for dry boat storage, or for any other use permitted in these Restrictions, for its use and maintenance. Other amenities provided by Declarant and deeded to the Association will be maintained by the Association.
22. As provided for herein (see Section 2 of "Property Subject To These Restrictions and Declaration and Additions Thereto"), it is understood that Declarant, its successors and assigns, may develop, subdivide or sell additional tracts or parcels of land. Declarant reserves the right for its successors or assigns to connect such additional property to this Planned Community and to grant easements to use the Planned Community roads and community access to the water and recreational areas of this Subdivision.
23. DEFINITIONS: Reference to "Planned Community" in this document is intended to refer to Phase I of OYSTER HARBOUR consisting of five (5) sheet in the Brunswick County Registry. Reference to "Association" in this document is intended to refer only to "OYSTER HARBOUR Homeowners Association, Inc."
24. Nothing herein contained shall be construed as imposing any covenants and restrictions on any property of the owner of this Planned Community other than the Property that is subjected to these Restrictions. The Property herein described is also made subject to the Declaration of Covenants, Conditions and Restrictions of OYSTER HARBOUR and OYSTER HARBOUR Homeowners Association, Inc. recorded separately, which Declaration is incorporated herein by reference.
25. Enforcement of these Restrictions may be at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction herein contained. In the event of enforcement of these Restrictions at law or in equity and a violation hereof is judicially determined, then the violator shall be assessed with the costs of such action, including without limitation reasonable attorneys fees.
26. The Declarant and purchasers of lots in OYSTER HARBOUR understand that the vesting of rights relating to proposed piers, docks, boat access ramps, floats, boathouses or disturbance of the shoreline buffer is subject to the terms and conditions set out by the United States Army Corps of Engineers and the State of North Carolina or their assigns. Zoning and Building permits are required from Brunswick County.
27. Declarant reserves the right to assign its rights to a successor who also assumes the Declarant responsibilities.
28. Judicial invalidation of one or more of the provisions hereof shall not adversely affect the remainder hereof which shall remain in full force and effect.

NORTH CAROLINA DEPARTMENT OF

ENVIRONMENTAL AND NATURAL RESOURCES DIVISION

OF WATER QUALITY REQUIRED RESTRICTIONS

The following covenants are intended to insure ongoing compliance with State Stormwater Management Permit #SW8000611 as issued by the Division of Water Quality. These covenants may not be changed or deleted without the consent of the State of North Carolina.

1. The allowable built upon area per lot is 6500 square feet. This allotted amount includes any built upon area constructed within the lot property boundaries, and that portion of the right of way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wooden decking, or the water surface of swimming pools.
2. The covenants pertaining to stormwater regulations may not be changed or deleted without concurrence of the Division of Water Quality.
3. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings is strictly prohibited by any persons.
4. Lots within CAMA'S Area of Environmental Concern may have the permitted built upon area reduced due to CAMA jurisdiction within the AEC.
5. Each lot will maintain a thirty (30) foot wide vegetative buffer between all impervious areas and surface waters.

**THESE RESTRICTIONS RUN WITH THE LAND**

This Declaration of Restrictive Covenants of OYSTER HARBOUR and the Declaration of Covenants, Conditions and Restrictions of OYSTER HARBOUR and OYSTER HARBOUR Homeowners Association, Inc. compose the general plan of development for the Property herein described and run with the land and shall benefit and be binding on all parties and persons (and their respective heirs, representatives, successors and assigns) claiming title to any of the Property herein described for a period of thirty (30) years from the date these Restrictions are recorded, after which time said Restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a sixty-six percent (66%) majority of the then owners of the lots and the Declarant has been recorded agreeing to change said Restrictions in whole or in part. These Restrictions may be amended by the affirmative vote of the owners representing sixty-six percent (66%) of the lots and the Declarant at the time of the vote.

Except as herein amended, said restrictive covenants recorded in Book 1357 at Page 1097 of the Brunswick County Registry shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Restrictive Covenants of OYSTER HARBOUR to be duly executed this 13 day of Sept, 2000.

OYSTER HARBOUR, LLC

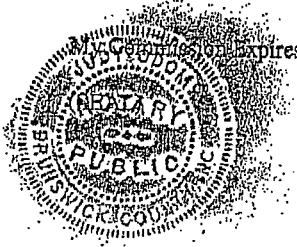
BY: Will P. Allen  
MANAGER

COUNTY OF BRUNSWICK

I, a Notary Public, in and for the county and state aforesaid do hereby certify that WILLIAM G. ALLEN personally appeared before me this day and acknowledged that he is the Manager of OYSTER HARBOUR, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the LLC, the foregoing instrument was signed by him.

Witness my hand and official seal this 15<sup>th</sup> day of Sept, 2000.

Judy Odom  
NOTARY PUBLIC



Commission Expires: 2-17-2004

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

The Foregoing (or annexed) Certificate(s) of JUDY ODOM

Notary(ies) Public is (are) Certified to be Correct.

This Instrument was filed for Registration on this 14<sup>th</sup> Day of September, 2000  
in the Book and Page shown on the First Page hereof.

Robert J. Robinson  
ROBERT J. ROBINSON, Register of Deeds