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**AMENDMENT OF DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
OYSTER HARBOUR PLANNED COMMUNITY**

KNOW ALL MEN BY THESE PRESENTS, the undersigned Declarant of Oyster Harbour Subdivision in 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 Planned Community (herein "Declarant") filed a Declaration of Covenants, Conditions and Restrictions of Oyster Harbour Subdivision in Book 1357 at Page 1087 of the Brunswick County Registry (herein "Declaration"); and

WHEREAS, said Declaration provided that said Declarant reserves the right to amend this Declaration from time to time without joinder of any of the owners; and

WHEREAS, the Declarant deems it expedient to amend said Declaration as follows:

NOW, THEREFORE, the undersigned Declarant does hereby amend said Declaration of Covenants, Conditions and Restrictions of Oyster Harbour Subdivision as follows:

ARTICLE I

DEFINITIONS

- 1.1. "Allocated Interests" means the common expense liability ownership interest in the Association and votes in the Association allocated to each lot.
- 1.2. "Association" or "Owner's Association" shall mean and refer to OYSTER HARBOUR Homeowners Association, Inc., a not for profit North Carolina corporation, its successors and assigns.
- 1.3. "Common Elements" means any real estate within Oyster Harbour Planned Community owned or leased by the Association, other than a lot to include all property owned by the Association for the common use and enjoyment of all or a designated class of members. Common Property includes without limitation all existing and future roads and right-of-ways and all greenways, median strips, cul-de-sac centers, planting areas, and recreational areas, and facilities, open space, walking trails, easements, boat ramps, community boat slips, and community piers that are developed on the Common Property (it being understood that this enumeration is by way of description of the type of facilities that may be developed and in no way shall bind or obligate the Declarant to provide any of the described facilities) and all entry way, directional, and informational signs (and the areas set aside for their location) and any other property as may be purchased or provided for the common use and benefit of the Declarant, the Lot Owners, and any member in the Association, including without limitation such Common Property as may be shown on the recorded plat(s) of the Property. Except by the Declarant, the

Common Property shall not be used for public commercial purposes, but may be used for enjoyment of the Association's members for fund-raising activities to support the purposes of the Association.

- 1.4. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- 1.5. "Common Expense Liability" means the liability for common expenses allocated to each lot as permitted by Chapter 47F of the North Carolina General Statutes, the Declaration or otherwise by law.
- 1.6. "Committee" shall mean the Architectural Review Committee established by the Declarant for the purpose of administering control over architectural, landscaping, and related matters, as provided in Article VII of this Declaration.
- 1.7. "Declarant" shall mean OYSTER HARBOUR, LLC, a North Carolina Limited Liability Company, and its successors and assigns if such successors and assigns acquire two or more undeveloped lots from the Declarant for the purpose of development and if the rights and obligations of the Declarant hereunder are expressly assigned to and assumed by such successors and assigns.
- 1.8. "Declaration" means this instrument, and any amendments thereto.
- 1.9. "Dwelling Unit" shall mean and refer to the completed single family home located upon a Lot.
- 1.10. "Executive Board" means the body, regardless of name, designated in the Declaration to act on behalf of the association.
- 1.11. "Limited Common Element" means a portion of the Common Elements allocated by the Declaration or by operation of law for the exclusive use of one or more but fewer than all of the Lots.
- 1.12. "Lot" shall mean and refer to any improved or unimproved building lot shown upon any recorded plat of this Planned Community. "Lot" means a physical portion of the Planned Community designated for separate ownership or occupancy by a Lot Owner.
- 1.13. "Lot Owner" means a declarant or other Person who is a contract buyer and/or the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of any of the Property made subject to this Declaration, but does not include a person having an interest in a Lot solely as security for an obligation.
- 1.14. "Master Association" means an organization described in G.S. 47F-2-120, whether or not it is also an association described in G.S. 47F-3-101.
- 1.15. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- 1.16. "Planned Community" means Oyster Harbour Planned Community.

- 1.17. "Property" shall mean and refer to that certain property shown on the site specific plan recorded in Plat Cabinet 23 at Pages 154-158 in the Office of the Register of Deeds for Brunswick County, North Carolina and any additional property which Declarant may make a part of this Planned Community, as provided for in the Declaration of Restrictive Covenants of OYSTER HARBOUR PLANNED COMMUNITY, recorded separately. The terms "Property," Planned Community," and "OYSTER HARBOUR" are interchangeable.
- 1.18. "Period of Declarant Control" means the period commencing on the date hereof and continuing until the earlier of:
- (a) two (2) years after Declarant has ceased to offer Lots for sale in the ordinary course of business.
 - (b) 120 days after conveyance of 80% of the Lots (including Lots which may be created pursuant to special Declarant rights) to a Lot Owner other than Declarant.
- 1.19. "Purchaser" means any person, other than Declarant, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than as security for an obligation.
- 1.20. "Real Estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interest which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real Estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.
- 1.21. "Reasonable Attorneys' Fees" means attorneys' fees reasonably incurred without regard to any limitations on attorneys fees which otherwise may be allowed by law.
- 1.22. "Special Declarant Rights" means rights reserved for the benefit of a Declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the Declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the Planned Community, and models; (iv) to use easements through the Common Elements for the purpose of making improvements within the Planned Community or within real estate which may be added to the Planned Community; (v) to make the Planned Community part of a larger planned community or group of planned communities; (vi) to make the Planned Community subject to a Master Association; or (vii) to appoint or remove any officer or executive board member of the Association or any Master Association during any period of declarant control.

ARTICLE II

EMINENT DOMAIN, ALTERATION and TERMINATION

- 2.1. Eminent Domain. If part of a Lot is acquired by eminent domain, the award shall compensate the Lot Owner for the reduction in value of the Lots. Upon acquisition, unless the decree otherwise provides, that Lot's allocated interest are reduced in proportion to the reduction in the size of the Lot and the portion of the Allocated Interest divested from the partially acquired Lot are automatically reallocated to that Lot and the remaining Lots in proportion to the

respective Allocated Interest of those Lots before the taking, with the partially acquired Lot participating in the reallocation on the basis of its reduced Allocated Interest.

If a Lot is acquired by eminent domain, or if part of a Lot is acquired by eminent domain leaving the Lot Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award shall compensate the Lot Owner for his Lot and its interest in the Common Element. Upon acquisition, unless the decree otherwise provides, the Lot's Allocated Interests are automatically reallocated to the remaining Lots in proportion to the respective Allocated Interest of those Lots before the taking, exclusive of the Lot taken.

In the event of such reallocation as aforesaid, the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Lot remaining after part of the Lot is taken under this section is thereafter a Common Element. If part of the Common Element is acquired by eminent domain, the portion of the award attributable to the Common Element's taking shall be paid to the Association. Any portion of the award attributable to the acquisition of the Limited Common Element shall be apportioned among the owners of the Lots to which that Limited Common Element was allocated at the time of acquisition based on their Allocated Interest in the Common Elements before the taking.

2.2. Amendment of Declaration.

The Declarant reserves the right to amend this Declaration from time to time without joinder of any of the Lot Owners if necessary for the exercise of any Special Declarant Rights. In all other cases, except those spelled out in Chapter 47F of the North Carolina General Statutes, the Declaration may be amended only by affirmative vote or written agreement signed by Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

No action to challenge the validity of an amendment adopted pursuant to this section may be brought more than one year after the amendment is recorded.

Every amendment to the Declaration shall be recorded in Brunswick County and is effective only upon recordation.

2.3. Termination.

Except in the case of taking of all of the Lots by eminent domain, the Oyster Harbour Planned Community may be terminated only by agreement of Lot Owners of Lots to which at least eighty percent (80%) of the votes in the Association are allocated.

An agreement to terminate shall be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of Lot Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in Brunswick County and is effective only upon recordation.

A termination agreement may provide for sale of the Common Elements, but may not require that the Lots be sold following termination.

2.4. Merger or Consolidation.

Oyster Harbour Planned Community, by agreement of the Lot Owners may be merged or consolidated into a single planned community. The resultant planned community is, for all purposes, the legal successor of all of the pre-existing planned communities, and the operations and activities of all associations of the pre-existing planned communities shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all pre-existing associations.

Such agreement to merge or consolidate shall be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the pre-existing planned communities following approval by owners of lots to which are allocated the percentage of votes in each planned community required to terminate that planned community. Any such agreement shall be recorded in the Brunswick County Registry and is not effective until recorded.

The merger or consolidation agreement shall provide for the reallocation of the allocated interest in the new association among the lots of the resultant planned community by stating the reallocations or the formulas upon they are based. [

ARTICLE III

MANAGEMENT OF OYSTER HARBOUR PLANNED COMMUNITY

- 3.1. A Lot Owner's Association has been incorporated as Oyster Harbour Homeowner's Association, Inc. Membership of the Association at all times shall consist exclusively of all the Lot Owner's or, if the Planned Community is terminated, of all persons entitled to distributions of proceeds pursuant to the termination.
- 3.2. Powers. The Association may:
 - 3.2.1. Adopt and amend bylaws and rules and regulations.
 - 3.2.2. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses from Lot Owners.
 - 3.2.3. Hire and discharge managing agents and other employees, agents, and independent contractors.
 - 3.2.4. Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the Planned Community.
 - 3.2.5. Make contracts and incur liabilities.
 - 3.2.6. Regulate the use, maintenance, repair, replacement, and modification of Common Elements.
 - 3.2.7. Cause additional improvements to be made as a part of the Common Elements.
 - 3.2.8. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest pursuant to the provisions of North Carolina General Statute 47F-3-112.
 - 3.2.9. Grant easements, leases, licenses, and concessions through or over the Common Elements.

- 3.2.10. Impose and receive any payments, fees, or charges for the use, rental or operation of the Common Elements other than the Limited Common Elements and for services provided to Lot Owners.
 - 3.2.11. Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges of services provided by the Association (except rights of access to lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer.
 - 3.2.12. After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to lots) for reasonable periods for violations of the Declaration, bylaws and rules and regulations of the association.
 - 3.2.13. Impose reasonable charges in connection with the preparation and recordation of documents including, without limitation, amendments to the Declaration or statements of unpaid assessments.
 - 3.2.14. Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents.
 - 3.2.15. Assign its right to future income, including the right to receive Common Expense assessments.
 - 3.2.16. Exercise all other powers that may be exercised by North Carolina non-profit corporations.
 - 3.2.17. Exercise any other powers necessary and proper for the governance and operation of the Association.
- 3.3. Bylaws.

The Bylaws of the Association shall provide for:

- 3.3.1. The number of members of the Executive Board and the titles of the officers of the Association.
 - 3.3.2. Election by the Executive Board of officers of the Association.
 - 3.3.3. The qualifications, powers and duties, terms of office, and manner of electing and removing Executive Board members and officers and filling vacancies.
 - 3.3.4. Which, if any, of its powers the Executive Board or officers may delegate to other persons or to a managing agent.
 - 3.3.5. Which of its officers may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.
 - 3.3.6. The method of amending the Bylaws.
- 3.4. The Executive Board may act in all instances on behalf of the Association.

The Executive Board may not act unilaterally on behalf of the Association to amend the Declaration, to terminate the Planned Community, or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members. The Executive Board may unilaterally fill vacancies in its membership for the unexpired portion of any term. The Lot Owners, by majority vote of all persons present and entitled to vote at any meeting of the Lot Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Within thirty days after adoption of any proposed budget for the Planned Community, the Executive Board shall provide to all the Lot Owners the summary of the budget and notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Executive Board shall set a date for a meeting of the Lot Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice.

There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all of the Lot Owners in the Association reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Executive Board.

- 3.5. Declarant Control of the Association. Subject to Sections 3.5.1, 3.5.2, 3.5.3, during the period of Declarant Control, a Declarant or persons designated by the Declarant may appoint and remove the officers and members of the executive board. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before the termination of the Period of Declarant Control, but in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.
 - 3.5.1. Conveyance of Control and Management Responsibilities to the Association shall take place within ninety days after 80% of all the Lots have been conveyed to Lot Owners other than Declarant, or no later than two years after Declarant has ceased to offer Lots for sale in the ordinary course of business.
 - 3.5.2. Not later than sixty days after conveyance of twenty-five percent (25%) of the lots to Lot Owners other than Declarant, at least one member and not less than thirty-three percent of the members of the Executive Board shall be elected by Lot Owners other than the Declarant.
 - 3.5.3. Unless sooner terminated by an amendment to the Declaration executed by the Declarant, the Declarant may execute any Special Declarant Right so long as the Declarant owns any lot or ten years after recording this Declaration. Neither the Association nor any Lot Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.
- 3.6. The Declarant reserves the following development rights during the Declarant Control Period:
 - 3.6.1. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the real estate anywhere in the Planned Community for the purpose of furnishing utility and other services to any lot. The Declarant also reserves the right to grant easements to public utility companies and to convey improvements within those easements for the above mentioned purposes. Any easement conveyed and granted by Declarant shall be by instrument duly recorded in the Brunswick County Register of Deeds office.
 - 3.6.2. The right to add Real Estate to the Planned Community; to create lots, Common Elements, or Limited Common Elements within the Planned Community; to subdivide lots or convert Lots into Common Elements.
 - 3.6.3. The powers of the Association listed in 3.2 may be delegated to a profit or non-profit corporation which exercises those or other powers on behalf of one or more of the planned communities or for the benefit of the lot owners of one or more of the planned communities.
 - 3.6.4. The right to contract through and with the Association for the use of the Common Elements by those end purchasers of outparcels located in River View Subdivision according to a map recorded in Map Book 4 at Page 55, Brunswick County Registry, and Lots 2 and 3 of Bellamy

Place according to a map recorded in Map Cabinet 22 at Page 259 Brunswick County Registry.

- 3.7. The Declarant reserves the following easements:
- 3.7.1. A right and easement of ingress, egress and regress over the Lots as necessary for the service and maintenance of the Common Elements including but not limited to ponds, trails and all other amenities.
 - 3.7.2. The Declarant reserves a right in easement for drainage and utilities 7.5 feet wide along the side and rear property line of each lot and 15 feet along the front property line of each lot. In the event the rear property line of a lot is not a common line with the rear property line of another lot in the Planned Community then in such event the utility and drainage easement along the rear property line of such a lot shall be 15 feet in width.
 - 3.7.3. The Declarant reserves a right and easement for existing and future stormwater runoff over and upon that part of those lots or parcels of land in the areas designated wetlands as shown on those maps of Oyster Harbour Subdivision Phases I, II, III and IV as recorded in the Brunswick County Registry. Said areas are to remain "undisturbed" as defined in the Clean Water Act.

ARTICLE IV

RIGHTS AND DUTIES OF THE ASSOCIATION AND PROPERTY OWNERS ASSESSMENTS

Until the Association makes a Common Expense assessment, the Declarant shall pay all Common Expenses. After any assessment has been made by the Association, assessments thereafter shall be made at least annually.

- 4.1. Owner's Easements of Enjoyment. The Declarant and, to the extent provided by this Declaration, every Owner shall have a right and easement of ingress, egress, and regress over the Common Elements and over the roads within the Property, to be used in common with others, for the purpose of providing access to Lot(s) owned or dwelling unit(s) owned by the Lot Owner for himself, his family, agents, licensees and invitees, and for his and their non-exclusive use and enjoyment of the Common Elements, subject however to the limitations on such use and enjoyment of the Common Elements, as provided for in this Declaration. Every Lot Owner, and the members of such Lot Owner's family who reside with such Lot Owner or are overnight guests of such Lot Owner, shall have the right to use the recreational areas within the Common Elements, subject however to such Lot Owner paying when due the dues and assessments of the Association and abiding by all rules and regulations of the Association, including without limitation those governing the use of the recreational areas and the Common Elements. Non-owners shall only be entitled to use the recreational areas on such terms and conditions as the Association may select.
- 4.2. Annual Assessments.
- 4.2.1. The Association shall have the duty to repair, replace, and maintain all recreational areas and improvements located thereon, and all streets, roads, road right-of-ways, and other Common Elements. The Association shall have the right, from time to time, to establish a reasonable assessment, which assessment shall be paid by each Owner in

such periodic installments as the Association may determine, to be used to pay: (1) the operating and administrative expenses of the Association; (2) the costs of maintenance, upkeep, replacement and repair of all recreational areas, and improvements located thereon, and all streets, roads, road right-of-ways, and other Common Elements; and (3) other expenses necessary or useful to maintain and operate the Association and the recreational facilities (including, without limitation, the procuring, maintenance and paying the costs of insurance related to the Common Elements and of surety and other bonds related to the management of the Common Elements and the Association. It is understood (by way of example and without limitation) that the assessment funds shall be used for such matters concerning Common Elements as the following: maintenance, repair and replacement of improvements within the recreational areas, the seeding and re-seeding road right-of-ways and Common Elements, erosion control, repairing of road shoulders, surfacing, patching and resurfacing of parking lot and road pavement, placement of gravel, and planting and maintenance of shrubs, trees and seasonal flowers.

- 4.2.2. The annual assessments may also be used by the Association for the purpose of adding to the recreational facilities.
- 4.2.3. The annual assessment payable by each Lot Owner shall be \$395.00 per Lot per calendar year. The annual assessment shall be due and payable on January 31 of each year. This assessment shall be deferred as to any Lot purchased by a builder with the intent to build a house for resale to the public at large. This assessment will be payable as to any Lot purchased by a builder who purchases a Lot for the purpose of building a custom home under contract with the ultimate residents. This assessment will be prorated on a calendar year basis from the date title to each Lot for which an assessment is payable is transferred to the Lot Owner.
- 4.2.4. The annual assessment may be increased or decreased by the Executive Board without a vote of the membership to an amount not more than ten percent (10%) in excess of the annual assessment for the previous year. A majority vote of each class of voting members of the Association must approve an increase or decrease in the yearly assessment if the increase or decrease exceeds the assessment for the previous year by more than ten percent (10%).
- 4.2.5. Annually the Executive Board shall have determined and shall have given written notice to each Owner of the annual assessment affixed against each Lot Owner for the immediately succeeding calendar year.
- 4.2.6. Any past due Common Expense assessment bears interest at the rate established by the Association not exceeding eighteen percent (18%) per year.
- 4.2.7. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Lots to which Limited Common Element is assigned, equally.
- 4.2.8. Any Common Expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefited.

- 4.2.9 The cost of insurance shall be assessed in proportion to risk and the cost of utilities shall be assessed in proportion to usage.
- 4.2.10 Assessments to pay a judgment against the Association may be made only against the Lots in the Planned Community at the time the judgment was entered, in proportion to their Common Expense Liabilities.
- 4.2.11 If any Common Expense is caused by the negligence or misconduct of any Lot Owner or occupant, the Association may assess that expense exclusively against that Lot Owner or occupant's Lot.
- 4.2.12 If Common Expense liabilities are reallocated, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liabilities.

4.3. Special Assessments.

In addition to the assessments specified herein above, the Association may levy special assessments for the purpose of supplementing the annual assessment if the same are inadequate to pay the reasonable maintenance expenses and operating costs of the Association as described in Section 4.2 hereof, provided that any such special assessments shall have the assent of a majority of each class of the voting members of the Association at a duly called meeting.

4.4. Removal of Obstructions and Unsightly Growth, Debris, and Materials.

- (a) The Association may remove any obstructions of any nature located within road right-of-ways or other Common Elements (including but not limited to trees, shrubs and mailboxes which, in the opinion of the Executive Board, either might produce a hazard or might interfere with the ability or willingness of the State of North Carolina (or agency or department thereof) to take over the responsibility for maintenance of the roads.
- (b) The Association shall have the right, in its sole discretion, to charge back the actual cost to it of removing obstructions against the Lot Owner who directly, or throughout his agents, contractors or invitees caused or permitted the obstruction to be placed in the road right-of-way or other Common Elements, and such Lot Owner shall indemnify and save the Association harmless from all liability, claims, damages and expense imposed upon the Association, at law or in equity, caused by or resulting from the placement of the obstruction in the road right-of-ways or other Common Elements. In the event the Lot Owner responsible for such charge or liability as aforesaid fails and refuses after demand by the Association to pay said charge or liability, then the Association shall have a lien against his Lot thereon and may enforce collection of the charge or liability, together with reasonable attorneys' fees, by any and all remedies afforded by law or in equity, including without limitation, the filing of a notice of lien and perfecting the same as by law provided, to the end that such charge or liability shall become a charge against the said Lot or Dwelling Unit.
- (c) If the Association, in its sole discretion, determines that any Lot has become unsightly due to grass or weeds that have not been mown, or due

to debris of any nature having accumulated on the Lot, then the Association shall have the right from time to time to enter the said Lot for the purpose of mowing the grass or removing the debris. At least ten (10) days prior to entering a Lot for said purpose, the Association shall advise the Lot Owner by letter, sent to his last known address, of the action to be taken if the Lot Owner does not remedy the problem within the said ten (10) day period. The Association shall take reasonable steps to avoid damage to any trees planted on such Lot, to the extent that the Association has been put on written notice in advance by the Lot Owner of the approximate location on a chart or map of such Lot showing the location of planted trees to be avoided.

- (d) The Association shall have the right in its sole discretion, to charge back the actual cost of mowing the grass or removing the debris against the Lot Owner. In the event the Lot Owner responsible for such charge or liability as aforesaid fails and refuses after demand by the Association to pay said charge or liability, then the Association shall have a lien against his Lot thereon and may enforce collection of the charge or liability, together with reasonable attorneys' fees, by all remedies afforded by law or in equity, including without limitation, the filing of a notice of lien and perfecting the same as by law provided to the end that such charge or liability shall become a charge against the said Lot or Dwelling Unit.

4.5. Duty to Make Repairs.

- (a) Until accepted for maintenance by governmental authority, the obligation for the repairs, maintenance and improvements of the roads as shown on the aforesaid plat(s) or any other Common Elements shall be the responsibility of the Association with the Lot Owner of each Lot except as provided herein, being responsible for payment of the assessments levied by the Association, which assessments shall be the personal obligation of the Owner of each Lot.
- (b) The decision to expend Association funds to repair and maintain the roads or other Common Elements shall be made by the Executive Board. The Executive Board may delegate such authority to any committee of the Executive Board. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his Lot.
- (c) Notwithstanding the foregoing, each Owner of a Lot shall be solely responsible for any repairs to a road right-of-way or other Common Elements caused by the negligent act or acts of said Lot Owner, his or her invitees, agents, licensees, or guests. For these purposes, it shall be a negligent act for any building material to be unloaded on any road or road right-of-way.

4.6. Lien for Unpaid Assessments.

Any assessment levied against a Lot remaining unpaid for a period of thirty days or longer shall constitute a lien on that Lot when a claim of lien is filed of record in the office of the Clerk of Superior Court of Brunswick County. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of

the North Carolina General Statutes. Fees, charges, late charges, fines, interest and other charges are enforceable as assessments under this section.

The lien under this section is prior to all liens and encumbrances on a Lot except liens and encumbrances (specifically including but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and liens for real estate taxes and other governmental assessments and charges against the Lot.

This section does not prohibit other actions to recover the sums for which this section creates a lien or prohibit the Association taking a deed in lieu of foreclosure.

A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorney fees.

Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns, shall not be liable for the assessments against such Lots which became due prior to the acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Lot Owner's including such purchaser, its heirs, successors and assigns.

A claim of lien shall set forth the name and address of the Association, the name of the record owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claim.

- 4.7. Portions of the Common Elements may be conveyed or subject to a Security Interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to that action; provided that all the Owners of Lots to which any Limited Common Element is allocated shall agree in order to convey that Limited Common Element or subject it to a Security Interest. Distribution of proceeds of the sale of a Limited Common Element or financing of a Common Element (other than a Limited Common Element) shall be an asset of the Association. The distribution of the proceeds of the sale of a Limited Common Element shall be as provided by agreement between the Lot Owners to which it is allocated and the Association. No conveyance or encumbrance of Common Elements pursuant to this section may deprive any Lot of its rights of access and support.
- 4.8. Insurance. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available:
 1. Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductible shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

2. Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

If said insurance is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States Mail to all Lot Owners. The Association in any event may carry any other insurance it deems appropriate to protect the Association or the Lot Owners.

Said insurance policy shall provide that:

1. Each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest;
2. The insurer waives its right to segregation under the policy against any Lot Owner or member of a Lot Owner's household;
3. No act or omission by any Lot Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy;
4. If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Any loss covered by the property policy shall be adjusted with the Association, but the insurance proceeds from that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Lot Owners and lien holders as their interest may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Lot Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Planned Community is terminated.

An insurance policy issued to the Association does not prevent a Lot Owner from obtaining insurance for the Lot Owner's own benefit.

Any portion of the Planned Community covered by the property policy described herein which is damaged or destroyed shall be repaired or replaced promptly by the Association unless the Planned Community is terminated or repair or replacement would be illegal under any state or local health or safety statute or ordinance or if the Lot Owners decide not to rebuild by an eighty percent (80%) vote including one hundred percent (100%) approval of Owners assigned to the Limited Common Elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of the Planned Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Planned Community, the insurance proceeds attributable to Limited Common Elements which are not rebuilt shall be distributed to the Owner's of the Lots to which those Limited Common Elements were allocated, or to

lienholders, as their interest may appear, and the remainder of the proceeds shall be distributed to all the Lot Owners or lienholders as their interest may appear, in proportion to the Common Expense Liabilities of all the Lots.

ARTICLE V

MEMBERSHIP, VOTING RIGHTS, OFFICERS AND MEETINGS

- 5.1. Membership. Every Owner of a Lot which is subject to this Declaration shall be a member of the Association. Membership is appurtenant to and may not be assigned. If and when Declarant develops additional Sections in the Planned Community the Owners of those Lots shall be members of the Association. The Declarant shall also be a member so long as it owns property within this expandable Planned Community.
- 5.2. Class Membership Voting. The Association shall have two (2) classes of membership.

CLASS A

- A. Class A members shall be all Lot Owners with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one (1) person owns an interest in a Lot all such persons shall be members but the vote for such Lot shall be exercised as they among themselves, shall determine in writing, which writing shall be filed with the Secretary of the meeting prior to voting, but in no event shall more than one vote be cast with respect to any Lot.

CLASS B

- A. Class B members shall be entitled to vote ten (10) votes for each Lot owned. Class B membership shall consist of the Declarant, or its successors or assigns until the happening of either of the following events whichever occurs earlier.
1. The earlier of four months after ninety percent (90%) of all the Lots in the Planned Community are sold as well as all adjacent undeveloped acreage sold and conveyed by the Declarant to unrelated third parties; or
 2. Ten (10) years from date of recordation of this Declaration; or
 3. At such time as Declarant voluntarily relinquishes majority control of the Association by a duly recorded instrument.
- B. Upon the happening of the earlier of either the three above described events, Class B membership shall cease and terminate and shall be converted to Class A membership.
- 5.3. Executive Board. There shall be three (3) members of the Executive Board of the Association who shall serve until such time as their successors are duly elected and agree to serve. The Executive Board shall have annual meetings and other such meetings as may be called at the request of the president of the Association or by any Executive Board member. So long as the Declarant, or its successors and assigns, is the Class B member, it shall select the board.

- 5.4. Suspension of Voting Rights. The Association shall have the right to:
- 5.4.1. Suspend the voting rights (if any) of a Lot Owner for any period during which assessment on his Lot remains unpaid and enforce collection of the same; and
 - 5.4.2. Suspend the voting rights (if any) of each Lot Owner who is a contract buyer for any period of time during which payments to the Declarant pursuant to terms of said contract are delinquent, during which period of time the Declarant shall succeed to the voting rights of said contract buyer.
- 5.5. Additional Sections.

The Declarant reserves the right (but is not obligated) to develop one or more additional Sections of Oyster Harbour Planned Community and incorporate the same within the provisions of this Declaration.

- 5.6. Ownership of a lot shall vest fee simple title to such a lot in the Lot Owner.
- 5.7. Membership in the Association shall include an allocated interest in the Common Elements owned by the Association, which shall be appurtenant to and shall pass with the title to every Lot. The allocated interest of every Lot Owner in the Association shall be proportionate to the total number of Lots in the Planned Community.

ARTICLE VI

CONVEYANCE OF COMMON PROPERTY

Within ten (10) years from the date of recording of this Declaration, Declarant will convey by deed its right, title, and interest in and over the road right-of-ways and any other Common Property within the Planned Community to the Association.

ARTICLE VII

ARCHITECTURAL CONTROL

- 7.1. In order to control design and location of the Dwelling Units and other improvements to be constructed, erected, placed, or installed (hereinafter "Improvements") upon the lots in the Planned Community, the Declarant hereby creates an Architectural Review Committee for the purpose of reviewing, approving, suggesting changes to, and rejecting plans and specifications for such improvements (regardless of when such Improvements are made), and the landscaping of each Lot. This Committee is also created for the purpose of reviewing, approving, suggesting changes to, and rejecting swimming pools, outbuildings, boathouses, ramps, piers, driveways, enclosures for satellite dishes, and if Declarant so desires, for mailbox design. This Committee will be responsible for the control of size, color, materials, and content of rental and sales signs in this Planned Community and for the approval or disapproval of boats, boat trailers, travel trailers, motor homes, tractor trailer trucks, or any other such vehicle, that are kept or maintained or located upon any lot unless located within enclosed garages. The Committee will also be responsible for the control of temporary construction shelters or

- vehicles in this Planned Community. The Committee will require a fee of \$250.00 to review house plans for each Lot Owner wishing to build. The review process may be subcontracted out at the discretion of the Committee.
- 7.2. The Committee shall consist of three persons designated or appointed from time to time by the Declarant. After 90% of the lots in the Planned Community are sold and 90% of undeveloped acreage is sold by the Declarant, its successor or assign, said Committee shall be elected by a majority vote of the Executive Board; provided, however, Declarant, its successors or assigns, shall be entitled to at least one Committee member until all of its lots in this Planned Community have been sold.
- 7.3. Except within the building site (unless within 20' 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. No building, fence, wall, outbuilding, or any other accessory feature to the Dwelling Unit or any other structure upon any Lot shall be commenced, 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.
- 7.4. The Plans include the complete construction plans, the plot plan (showing proposed location and elevation of such building, fences, walks, drives, parking area, etc.) proposed building plans and specifications, exterior color, finish, and materials. The areas over which the approval shall be required shall include but shall not be limited to the size and plan of the principal residential structure, and all accessory buildings, structures and improvements on the Lot, the location of the well, the size and plan of the garage or carport, location and manner of construction of each driveway, swimming pool, utility building, patio, tennis court, and other Improvements for athletic, recreational, or gymnastic purposes, and all other exterior Improvements, the composition and color of raw and finished materials used on the exterior of all structures, and the location and type of any landscaping, shrubbery, and other plantings.
- 7.5. With a set of plans, a \$500.00 refundable road repair bond must be posted with the Association. If the road shoulders and road have not been damaged during construction, the bond will be refunded.
- 7.6. The Committee or its designated agents shall have forty-five (45) days after physical receipt of the Plans to accept or reject the same in whole or in part. If no response by the Committee has been made in writing within said forty-five (45) days, the Plans shall be deemed to be approved as submitted. After the Plans are approved and after the Committee gives written permission for construction to begin, the actual construction shall be commenced and completed in accordance with the approved Plans, together with the requirements of the Declaration and, in this regard each Lot Owner shall provide the Committee with the foundation survey as soon as it is made. The Committee shall have the right to waive setback violations when the remedial costs of correcting such violation, in the Committee's opinion, would impose undue hardship upon the violator.
- 7.7. The actual construction shall be the responsibility of the Lot Owner and his builder. Any permission granted for construction under this covenant and any designation of approved licensed contractors shall not constitute or be construed as an approval, warranty or guaranty, expressed or implied, by the Declarant or

the Committee or its designated agent of the structural stability, design or quality of any building or other Improvement or of the contractor who constructs such buildings or other Improvements.

ARTICLE VIII

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 shown on the recorded plat(s) herein referred to, and all Property presently owned as part of Oyster Harbour Planned Community which plat(s) are to be recorded, and all Property which may be acquired in the future to be made a part of Oyster Harbour Planned Community, is made subject to the Declaration of Restrictive Covenants of Oyster Harbour Planned Community as may be amended or modified (hereinafter referred to as "Restrictions") which Restrictions shall be recorded separately and shall refer to this Declaration and incorporate it by reference.

ARTICLE IX

CAPTIONS, ENFORCEMENT AND INVALIDATION

- 9.1. Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine.
- 9.2. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provisions hereof.
- 9.3. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. In the event it is necessary to enforce this Declaration by appropriate legal or equitable proceedings, the party or parties violating or attempting to violate the same shall be liable for the cost of such proceedings including reasonable attorneys' fees.
- 9.4. Invalidation of any one or more of these covenants by judgment or court shall not adversely affect the balance of this Declaration, which shall remain in full force and effect.

ARTICLE X

THESE RESTRICTIONS RUN WITH THE LAND

- 10.1. This Declaration of Covenants, Conditions and Restrictions of Oyster Harbour Planned Community and Oyster Harbour Homeowners Association, Inc. are to 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 this Declaration is recorded, after which time said Covenants 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 Lot

Owners, and the Declarant and has been recorded agreeing to change said Declaration in whole or in part.

- 10.2. Title to the property comprising the Planned Unit was acquired by the Declarant subject to certain easements of ingress, egress and regress to owners of land not located within the Planned Community. These easements have been relocated to the roads located within the Planned Community and those persons owning such an easement will be entitled to use the roads located within the Planned Community but shall not be entitled to use any other Common Elements.
- 10.3. Recreational facilities which are part of the Common Elements may be used by the owners of land located adjacent to the Planned Community described as River View subdivision and Bellamy Place subdivision; provided however, that the owners of said land shall pay dues equal to those paid by Association members.

ARTICLE XI

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL AND NATURAL RESOURCES DIVISION OF WATER QUALITY REQUIRED RESTRICTIONS

- 11.1. The following covenants are intended to insure ongoing compliance with state stormwater management permits as issued by the Division of Water Quality. These covenants may not be changed or deleted without the consent of the State.
- 11.2. No more than sixty-five hundred (6,500) square feet of any lot shall be covered by structures or impervious materials. Impervious materials include asphalt, gravel, concrete, brick, stone, slate or similar material but do not include wood decking or the water surface of swimming pools.
- 11.3. Swales shall not be filled in, piped, or altered except as necessary to provide driveway crossings.
- 11.4. Built-upon area in excess of the permitted amount requires a state stormwater management permit modification prior to construction.
- 11.5. All permitted run-off from outparcels or future development shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the system as permitted.

Except as herein amended, said Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions and Restrictions of Oyster Harbour Subdivision Planned Community and Oyster Harbour Homeowners Association, Inc. to be duly executed this 13 day of Sept, 2000.

OYSTER HARBOUR, LLC

BY: Will Allen X
MANAGER

STATE OF NORTH CAROLINA

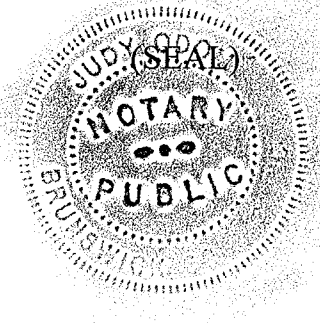
COUNTY OF BRUNSWICK

I, a notary public of the county and state aforesaid, certify that William G Allen personally came 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 and deed of the said company the foregoing instrument was signed by him.

Witness my hand and official stamp or seal, this 13th day of Sept, 2000.

Judy Odom
NOTARY PUBLIC

My 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 14th Day of September, 2000 in the Book and Page shown on the First Page hereof.

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