

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OTTER CREEK LANDING YACHT CLUB, INC.

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RECORDED AND VERIFIED
REBECCA P. TUCKER
REGISTER OF DEEDS
NEW HAMPSHIRE CO. NO

Dec 16 10 45 AM '83

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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OTTER CREEK LANDING YACHT CLUB, INC.

THIS DECLARATION, made this 16 day of December, 1983, by OTTER CREEK, INC., 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 property in Federal Point Township, New Hanover County, North Carolina, upon which Declarant has developed, or is developing condominiums, known as OTTER CREEK LANDING, in connection with said development, Declarant has constructed or plans to construct a private boat dock facility along the water front area as shown on the map of said facility entitled "OTTER CREEK LANDING YACHT CLUB, INC." recorded in the Office of the Register of Deeds of New Hanover County in Condominium Plat Book 5 at Page 3; and

WHEREAS, in accordance with the plan for said development, Declarant has set aside or intends to set aside certain areas for the common use and enjoyment of all property owners at OTTER CREEK LANDING, and accordingly has organized a Community Property Owners Association known as OTTER CREEK LANDING YACHT CLUB, INC., a private non-profit corporation, to hold title to the boat dock facilities and all open spaces and common areas intended primarily for the mutual use, benefit and enjoyment of all property owners in OTTER CREEK LANDING, all of whom shall be members of the Yacht Club.

NOW, THEREFORE, Declarant hereby declares that all of the properties comprising the boat dock facility referred to above and being more particularly described in Exhibit A attached hereto and incorporated herein by reference, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the development and all of which easements, covenants, restrictions and conditions shall run with the land and shall be binding upon parties having or acquiring any right, title or interest in the described premises or any part thereof, and shall inure to the benefit of each member of the Association.

ARTICLE I

DEFINITIONS

Section 1. ASSOCIATION shall be used interchangeably with CORPORATION, and shall mean and refer to OTTER CREEK LANDING YACHT CLUB, INC., a non-profit corporation, its successors and assigns. All condominium unit owners in OTTER CREEK LANDING, PHASE I (and future phases) shall be members of the Association, which membership shall be appurtenant to and may not be separated from the ownership of such condominium unit.

Section 2. PROPERTIES shall mean and refer to that certain real property described in Exhibit A, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. COMMON AREAS shall mean all real and personal property owned by the Association for the common use and enjoyment of the members of the Association.

Section 4. BOAT DOCK FACILITY shall mean and refer to all of the property shown on the plat entitled "OTTER CREEK LANDING YACHT CLUB, INC.", recorded in the Office of the Register of Deeds of New Hanover County in Condominium Plat Book 5 at Page 3.

Section 5. BOAT SLIP shall mean the space in and above the water adjacent to Myrtle Grove Sound for the docking of a boat as shown diagrammatically on the plat of the docking spaces referred to in Section 4 above. 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, evidenced by an appropriate certificate, 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 OTTER CREEK, INC., its successors and assigns.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Except as provided in Section 2 of this Article, annexation of additional property outside the boundary shown on the general plat attached hereto as Exhibit B shall require the assent of two-thirds (2/3) of the members, at a meeting held in accordance with the By-Laws, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the time, date, place and purpose of the meeting. A quorum shall be fifty percent (50%) of the members of the Corporation. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 2. If the Declarant shall desire to enlarge the boat basin and/or to create additional boat slips, such additional area may be annexed to said properties without the assent of the members of the Corporation, provided however, that development of the additional lands to enlarge the boat basin shall be in accordance with a general plan submitted to and approved by all required Federal, State and local regulatory authorities, and provided further that no such annexation shall become effective until a revised plat of the boat dock facility is recorded in the Office of the Register of Deeds in New Hanover County showing the areas to be annexed and/or the boat slips to be added.

Section 3. If the boat basin is enlarged as provided in Section 2 above, the Declarant reserves the right to temporarily reassign the slip of any member located in the area to be enlarged. If no slips are available for reassignment, the Declarant shall pay all reasonable mooring and docking charges for the boat of any member temporarily displaced from his assigned slip during construction to enlarge the boat basin. Declarant shall give any such members whose slip will be temporarily unusable during

construction, at least thirty (30) days notice prior to notice to relocate any boats moored in the unusable slips.

ARTICLE III

MEMBERSHIP

Section 1. MEMBERS. The number of memberships in the Association shall be not less than seventy-one and shall be at least equal to the total number of condominium units in OTTER CREEK LANDING (a development of not more than 130 condominium units, Phase I and future phases). Such membership shall be appurtenant to and may not be separated from the ownership of any such condominium unit (as above defined) with the sole exception that pending construction of at least 71 condominium units, all memberships in excess of the total number of existing condominium units shall be held by Declarant. Every conveyance or transfer of a condominium unit in OTTER CREEK LANDING (as above defined) whether by deed, will or inheritance, shall be conclusively presumed to include the transfer and conveyance of the membership in this Association which shall be appurtenant to said condominium unit whether or not such membership is contained in the deed, will or other muniment of title transferring the property.

Section 2. TRANSFER OF MEMBERSHIPS: Memberships shall not be transferable except as an incident or appurtenance to the transfer of the ownership of a condominium unit in OTTER CREEK LANDING. Every conveyance or transfer, whether by deed, will or inheritance of a condominium unit shall be conclusively presumed to include the transfer and conveyance of the membership appurtenant to the same whether or not reference to the transfer of such membership is contained in the deed, will or other muniment of title transferring the property.

Section 3. ASSIGNMENT OF BOAT SLIPS: Each membership may or may not be assigned a boat slip. The Association shall assign a boat slip for each membership for which a slip is to be assigned. The boat slips so assigned may be exchanged among the members of the Association, except that no member may transfer or sell his membership except as an incident to the sale of his condominium unit in OTTER CREEK LANDING.

Section 4. RIGHTS OF MEMBERS:

- A. Each member of the Association shall have the exclusive right, subject to the provisions hereof, the By-Laws and Rules and Regulations promulgated by the Board of Directors and any applicable local, state or federal regulations to occupy, possess and lawfully use the boat slip assigned to such member.
- B. Each member shall have the right and easement of enjoyment in and to the common areas subject to the right of the Association:
- (1) To limit the number of guests of members;
 - (2) In accordance with its Articles and By-Laws to borrow money for the purpose of improving the properties, common areas and facilities;
 - (3) 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;

- C. 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 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.

The Declarant shall have Class II voting rights, which shall entitle the Declarant to three (3) votes for each membership owned (including memberships appurtenant to pending or future construction as described in Article III, Subparagraph 1 herein). 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 equal the total Class II votes outstanding;
or
(b) On December 9, 1988.

ARTICLE IV

COVENANTS 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 membership against which each such assessment is made. 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, healthy, 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 IMPROVEMENTS: In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or 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 members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 4: At the first meeting called as provided in Section 4 hereof, presence of members or proxies entitled to cast the votes of sixty percent (60%) of all the memberships shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to fifteen (15) days written notice, and the required quorum for such subsequent meeting shall be the presence of members or proxies representing fifty percent (50%) of the membership entitled to vote.

Section 6. 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 first month following the recordation of the deed from Declarant to the first unit owner in OTTER CREEK LANDING. Provided that the Declarant shall not be assessed and no assessment shall be due for memberships held by Declarant for 60 days from recordation of the deed for the first unit. Assessments shall be prorated between Declarant and an acquiring new member at closing of the transfer. 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 annual assessment period. Written notice of the annual assessment shall be sent to every owner of 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 Corporation 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 7. 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 8. EFFECT OF NON-PAYMENT OF ASSESSMENTS - REMEDIES OF THE CORPORATION: Any assessment or any portions thereof which are 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 ten percent (10%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessments. Such action shall be in addition to any other remedies available to the Association including, without limitation the right of the Association to restrict, in whole or part, the use of the facility by the delinquent member. 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 or transfer of his condominium unit at OTTER CREEK LANDING to which this membership is appurtenant.

ARTICLE V

MAINTENANCE

Section 1. IMPROVEMENTS AND ALTERATIONS: 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. 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, however, Declarant may use such portions of the properties as it deems advisable, excepting slips assigned to members other than Declarant, for marketing purposes. This restriction shall not prevent the rental of condominium units and its appurtenances by owners/members. However, no boat slip may be leased separately from the condominium unit to which the membership is appurtenant.

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.

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Section 4. HOUSEBOATS. No "Houseboats as defined by the Board may be left in any boat slip for more than forty-eight (48) hours without approval in writing from the Board of Directors of the Corporation. No unsightly, dangerous or otherwise undesirable boat may be left in the property of the Corporation without the consent of the Board.

Section 5. WATER QUALITY. The cleaning of fish shall be prohibited within the harbour so as to insure the quality of the water. No refuse, sewage, trash, oil, gasoline or other item may be released into the water of the Harbour.

Section 6. DOCKING. No boat in any slip shall extend beyond the slip in which it is docked, and no boat in any slip shall be of an "over-all length" in excess of the length originally designated on the membership certificate for that slip.

Section 7. TIMESHARING. "Timesharing" or "Interval Ownership" of corporate membership or corporate property is specifically prohibited.

ARTICLE VII

EASEMENTS

Section 1. ACCESS EASEMENTS. The Declarant hereby reserves unto itself, its successors and assigns, a perpetual easement and right of way for access, ingress and egress over the common areas of OTTER CREEK LANDING YACHT CLUB in the event Declarant should develop any property adjoining the development and annex the same to this development.

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

Section 3. EASEMENT FOR OTTER CREEK LANDING UNIT OWNERS. Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the common areas and facilities; and for vehicular traffic over, through and across such portions of the common areas and facilities as from time to time may be paved and intended for such purposes, for all unit owners of units in all phases of construction or future construction of OTTER CREEK LANDING, their guests, families, invitees, lessees, the Association, the Declarant, its successors and assigns.

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: Invalidation 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 common expenses 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 cause 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, OTTER CREEK, INC. a North Carolina Corporation has caused this Declaration to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

OTTER CREEK, INC.

ATTEST:



Betty Brock
BETTY BROCK, Assistant Secretary

BY Murray O. Duggins
MURRAY O. DUGGINS, President

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NORTH CAROLINA

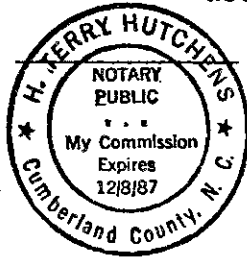
CUMBERLAND COUNTY

I, H. Terry Hutchens, a Notary Public of Cumberland County, North Carolina certify that BETTY BROCK personally came before me this day and acknowledged that she is Assistant Secretary of OTTER CREEK, INC., a 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 herself as its Assistant Secretary.

WITNESS my hand and notarial seal, this 16 day of December, 1983.

H. Terry Hutchens
Notary Public

My Commission Expires:



STATE OF NORTH CAROLINA
New Hanover County

The Foregoing Certificate of
H. Terry Hutchens
Notary Public
is certified to be correct
This the 16 day of Dec 1983

Rebecca P. Tucker, Register of Deeds

By Mary Sue Oats
Asst.

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