

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

THIS DECLARATION, is made on the date hereinafter set forth by P. A. DEPLAND of New Hanover County, North Carolina, hereinafter referred to as "Declarant".

WITNESSETH:

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THAT WHEREAS, Declarant is the owner of certain property in the County of New Hanover, State of North Carolina, in Harnett Township, which is more specifically described in Exhibit "A" hereto attached, made a part hereof and incorporated herein by reference; and

WHEREAS, Declarant will convey the said properties, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE IDefinitions

Section 1. "Association" shall refer to Eagle Point Owners Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

RETURNED TO

J.M. Jackson

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

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Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the common area.

Section 6. "Declarant" shall mean and refer to P. A. DEPLAND, his heirs, successors and assigns if such heirs, successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## ARTICLE II

### Property Rights

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

A. The right of the Association to limit the number of guests of members;

B. The right of the Association to suspend the voting rights and right to the use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

C. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument

agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded in the public records of New Hanover County;

D. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Areas. The Declarant hereby covenants for himself, his successors and assigns, that he will convey fee simple title to the Common Areas to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, with the exception of utility easements.

Section 4. T.V. Antennas and Piped-In Music. The Association may provide one or more central television antennas for the convenience of the owners and may supply piped in music and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas on individual lots.

### ARTICLE III

#### Membership and Voting Rights

Section 1. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) On December 31, 1984.

#### ARTICLE IV

##### Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each improved Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of

such property at the time when the assessment 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 to promote the recreation, health, safety, and welfare of the residents of the Properties and for the improvement and maintenance of the Common Areas.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be THREE HUNDRED SIXTY AND NO/100----- Dollars (\$360.00) per Lot.

Thereafter, the Board of Directors shall fix the annual assessment for members.

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, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the

required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, bi-annual or yearly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all improved Lots on the first day of the month following the conveyance of the first Lot in the project. 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 Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by North Carolina law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

Architectural Control

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by either Peter A. Depland or Bland & Associates prior to January 1, 1985, and on and after January 1, 1985, be submitted to the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

Use Restrictions

Section 1. Rules and Regulations. The Board of Directors of the Association has the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Areas.

Section 2. Use of Properties. No portion of the Properties shall be used except for residential purposes and for purposes incidental or accessory thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

ARTICLE VII

Easements

All of the Properties, including Lots and Common Areas, shall be subject to such easements for water lines, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Areas conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

ARTICLE VIII

General Provisions

Section 1. Enforcement. The Association, or any owner, 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 the provisions of this Declaration. Failure by the Association or by any owner 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 ways affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10)

years. This Declaration may be amended by vote of five-sevenths (5/7) of the Lot Owners. Any amendment must be recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 31st day of May, 1982.

P. A. Depland (SEAL)  
P. A. DEPLAND

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

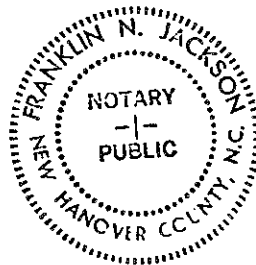
I, Franklin N. Jackson, a Notary Public in and for the State and County aforesaid do hereby certify that P. A. DEPLAND personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

This the 31st day of May, 1982.

Franklin N. Jackson  
Notary Public

My Commission Expires:

June 3, 1984



STATE OF NORTH CAROLINA  
New Hanover County  
The Foregoing Certificate of  
Franklin N Jackson  
a notary public  
is certified to be correct.  
This the 26 day of July 19 82

Rebecca P. Tucker, Register of Deeds  
By Peggy R. Howard  
Asst.

BEGINNING at a concrete monument, said monument being located South 35 degrees 30 minutes West 2950 feet from the intersection of Nixon Boulevard with the new Porter's Neck paved road paralleling the sound and runs thence South 54 degrees 30 minutes East 123 feet to a concrete monument at the high water mark of Topsail Sound; thence in a southwestwardly direction and along the said high water line of Topsail Sound as it meanders 635 feet, more or less, to Little Creek; thence along the high water line and up Little Creek as it meanders 1158 feet, more or less, to a concrete monument in the high water line of the eastern side of Little Creek; thence South 54 degrees 30 minutes East 304 feet to the point of BEGINNING, containing 5 acres, more or less, and being that point of land lying North of the mouth of Little Creek and between Topsail Sound on the East and Little Creek on the west.

ALSO such title and interest as the party of the first part may have in the adjoining marshlands described as follows: BEGINNING at a concrete monument in the high water line of Topsail Sound, said monument being the second corner of the tract of land above described and runs thence South 54 degrees 30 minutes West to the right of way line of the Inland Waterway; thence in a southwestwardly direction and along said right of way line to the centerline of the run of Little Creek; thence up and with the run of Little Creek as it meanders to a point opposite the third corner of the above described tract; thence South 54 degrees 30 minutes East 100 feet to a concrete monument in the high water line on the Eastern edge of Little Creek; thence in a westerly direction and along the high water line of Little Creek and Topsail Sound as it meanders to the point of BEGINNING, Excepting from the above description a right of way 50 feet in width over and across said marshland from the Inland Waterway and up Little Creek for the purpose of constructing a canal up Little Creek slough.

LESS that tract of land described in a deed and deed of release dated March 19, 1975, from Renee' DePland, widow, et al, to James A. DePland and wife, Barbara B. DePland, recorded in Book 1026, at Page 91 of the New Hanover County Registry.

SUBJECT, HOWEVER, to the thirty (30) foot power line right of way that crosses the above described 1.25 acre tract of land, said right of way being straight and having a bearing of North 66 degrees 16 minutes East, the center of said right of way at the high water line of Little Creek is located in the above description.