

---

AUG 19 9 19 AM '86

---

2-A

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
MISTY HARBOUR

Developer:

Otis W. Taylor

Document Prepared By:

Jerry C. Woodell  
MARSHALL WILLIAMS GORHAM & BRAWLEY  
Attorneys at Law  
14 South Fifth Street  
Post Office Drawer 2088  
Wilmington, North Carolina 28402  
Telephone: (919) 763-9891

RETURNED TO *Johnnie Garrison*

---

072913

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
MISTY HARBOUR

KNOW ALL MEN BY THESE PRESENTS:

THAT OTIS W. TAYLOR is the owner and developer of certain real property known as, or to be known as MISTY HARBOUR, which said real property is located in Harnett Township, New Hanover County, North Carolina. The said real property is more fully described on that certain map titled MISTY HARBOUR recorded in Map Book 26 at Page 68 in the Office of the Register of Deeds of New Hanover County. OTIS W. TAYLOR has established a general plan for improvement and development of said real property and OTIS W. TAYLOR, in connection with his general plan for the improvement and development of said real property, desires to establish and place certain covenants, conditions, reservations and restrictions upon which and subject to which all portions and parts of the said real property, including the residential lots located therein, shall be held, improved, sold or conveyed by him as owner thereof and upon the use and occupancy of said residential lots, or positions thereof, which may be sold by the owner from time to time in any part of said subdivision. Now, therefore, OTIS W. TAYLOR, by this Declaration, does hereby place upon said real property and all lots sold by him in said subdivision after this date the following covenants, conditions, reservations and restrictions:

DEFINITIONS: As used in this Declaration of Covenants, Conditions and Restrictions, the following terms shall mean:

(a) "OTIS W. TAYLOR", hereinafter sometimes referred to as Developer, means (i) the Developer, and (ii) the Developer's successors and assigns.

(b) "Property" generally means the real property owned by the Developer in New Hanover County, North Carolina, which is more fully described on that certain map titled "MISTY HARBOUR" recorded in Map Book 26 at Page 68 of the New Hanover County Registry, together with any additional real property which may hereafter be made subject to these restrictions, as the same may be amended from time to time, and be made subject to the jurisdiction of the Misty Harbour Property Owner's Association, Inc. The real property consists of the eleven (11) lots and the private roadways shown on the said map.

(c) "Lot" or "lots" shall mean those portions of the real property specifically allocated, platted and/or recorded as lots for sale or lots sold and/or used as single family residences on any recorded map or maps of MISTY HARBOUR.

(d) "Association" shall mean the Misty Harbour Property Owner's Association, Inc., its successors and assigns.

(e) "Restrictions" shall mean the covenants, conditions,

reservations and restrictions set forth in this Declaration of Covenants, Conditions and Restrictions and all subsequent amendments hereto which are duly recorded in the New Hanover County Registry.

(f) "Owner" shall refer to the purchaser of a lot or lots in MISTY HARBOUR.

(g) "Residence" and/or "dwelling" shall mean a single family residence.

(h) "Architectural Review Committee" shall mean and refer to a committee of three lot owners appointed by the Board of Directors of the Association which such committee shall be responsible for the review and approval of all plans and specifications for the construction of residential dwellings on lots. The committee may consist of the Directors constituting the Board of Directors of the Association.

(i) "Declaration" means this Declaration of Covenants, Conditions and Restrictions and all subsequent amendments hereto which are duly recorded in the New Hanover County Registry.

(j) "Common Area" shall mean all real property (including the improvements thereof or thereto) owned by the Association for the common use and benefit of the owners of lots all as shown on any recorded map or plat of MISTY HARBOUR.

1. APPLICABILITY: These restrictions shall apply to all residential lots sold by the Developer after the date hereof, and, as applicable or required herein, to any common areas located in said real property.

2. PROPERTY OWNER'S ASSOCIATION: In addition to, and not in limitation of, any powers granted to the Association in its charter or by-laws, the association shall have the right and the responsibility for maintaining roads, drainage easements, traffic control, utility locations, all common areas and common community services and general planting and landscaping within roadway areas and common areas located within the said MISTY HARBOUR and shall have all powers necessary to enforce the conditions, covenants, restrictions and reservations set forth in this Declaration. Each and every lot owner, in accepting a deed or contract for purchase for any lot in the said MISTY HARBOUR agrees to become and shall be, so long as such person owns a lot, a member of the Association and agrees to abide by and be subject to all of the terms of this Declaration and the charter, by-laws and rules and regulations of the Association.

3. RESIDENTIAL USE: All lots, and each and every one, are to be used for single family residential purposes only and shall not be used for other than residential use. No building or structure other than one single family residence shall be erected or placed on any lot. No structure of a temporary nature, trailer, tent, shack, barn or other similar structure shall be permitted on any lot either temporarily or permanently at any time; provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of the main dwelling, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or be permitted to remain on the lot after completion of construction of the main dwelling. No structure on any lot other than a fully completed residence shall be occupied.

4. DIVISION OF LOTS:

(a) No lot shall be subdivided or its boundary lines changed except with the prior written consent of the Developer.

(b) One lot, as shown on the plat of MISTY HARBOUR, shall be the minimum building area upon which a single family residence may be constructed. One or more lots may be utilized as a single building plot.

5. BUILDING AND SITE IMPROVEMENTS:

(a) No building, fence, well, or other structure shall be erected, placed or altered on any residential lot, nor shall the grade or elevation or physical characteristics, of any such lot, or portion thereof, be altered in any way whatsoever, until the proposed building plans, specifications, exterior colors and finishes, site, landscaping and grading plans (showing the proposed location of such building or structure, drives, parking areas, landscaping, and proposed alterations to the grade, elevation or physical characteristics of the site), and construction schedule shall have been approved in writing by the Association. Refusal or approval of any such plans, location or specifications may be based by the Association upon any ground, including environmental considerations, that in the sole and uncontrolled discretion of the Association shall seem sufficient. Without the prior written consent of the Association, no changes or deviations in or from such plans or specifications as approved shall be made. No alterations in the exterior appearance of any building or structure, or in the grade, elevation, or physical characteristics of any lot shall be made without like approval by the Association. One (1) copy of all plans and related data shall be furnished to the Association for its records. The Association shall not be responsible for any structural or other defects in plans or specifications submitted to it or in any structure erected according to such plans and specifications. The disapproval of the plans and specifications by the Architectural Review Committee shall be final and binding upon the owner of any lot.

6. APPROVAL OF PLANS:

(a) No house plans will be approved unless the proposed dwelling has the minimum required square footage of enclosed dwelling area and meets the other requirements of the Association. The Association in reviewing plans and specifications for proposed dwellings shall act through its duly appointed Architectural Review Committee.

7. RESIDENCES:

(a) The minimum square footage of the main dwelling shall be one thousand four hundred (1,400) square feet of heated floor space, exclusive of garage, covered walks and porches.

(b) The maximum square footage of the main dwelling shall be three thousand five hundred (3,500) square feet of heated floor space exclusive of garage, covered walks and porches, unless otherwise approved by the Association.

(c) The main entrance to the living area of the dwelling shall be constructed within the main body of the house.

(d) Entrance lights and yard lighting shall be small wattage low level ground lighting. High intensity flood lighting from poles or dwellings is not permitted unless specifically approved in writing by the Architectural Review Committee.

(e) The height of any building shall not exceed two (2) stories and the height of same shall be approved by the Architectural Review Committee.

(f) Each lot owner shall provide receptacles for garbage, in a screened area not generally visible from the road, or provide underground garbage receptacles or similar facility in accordance with reasonable standards established by the Association.

(g) No trees, bushes, shrubs, or other vegetation whatever, may be removed, planted or installed from or on any lot without prior written approval of the Association, based upon a site plan, landscaping plan or planting plan submitted to the Association.

(h) No necessary buildings (which may include a detached private garage, cabana, servant's quarters or guest facilities) shall be constructed without the prior written consent of the Association. No such structures shall be allowed unless (a) such conform with the style of the primary residence, (b) such do not, in the opinion of the Association, overcrowd the site, and (c) such accessory buildings are not used for any activity normally conducted as a business.

(i) All lots shall be used for residential purposes exclusively.

(j) No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within the main dwelling house, within an accessory building, within a screened area, or buried underground; provided, however, that nothing contained herein shall prevent the Developer or the Association from erecting, maintaining, placing or permitting the placing of tanks, or other apparatus, on the property for uses related to the provisions of utility or other service.

(k) The exterior styles of dwellings shall be approved by the Architectural Review Committee.

(l) Prior to the occupancy of a residence on any lot, proper and suitable provision shall be made for the disposal of sewage by means of a septic tank and related apparatus or other method, provided that any such method must be approved by the Association and the appropriate State or County health authorities.

(m) Exterior siding materials shall be as determined by the Architectural Review Committee. Colors that contrast with the surroundings and neighboring houses are to be avoided. Roof materials and shingle color range shall be a specifically approved by the Architectural Review Committee.

(n) Since the establishment of standard inflexible building setback lines for location of houses on lots tends to force construction of houses both directly behind and directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines are established by these Restrictions. In order to assure, however, that the foregoing considerations are given maximum effect, the Association reserves the right to control and approve absolutely the site and locations of any house or dwelling or other structure upon any lot.

#### 8. MAINTENANCE BY OWNER:

(a) It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkept

conditions of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

(b) No noxious or offensive activity shall be carried on upon any lot, or shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the neighborhood. There shall not be maintained any plants or animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof.

9. GARAGES: No garage shall be placed, erected or maintained upon any part of any lot except for use in connection with a residence already constructed or under construction at the time that such garage is placed or erected upon the lot. Garages shall be for the use only of the occupants of the residence to which they are appurtenant. Detached garages are discouraged but will be considered on a case by case basis by the Association.

10. PARKING AND DRIVEWAY: Each lot owner shall provide space for parking two (2) automobiles off the street prior to the occupancy of any dwelling constructed on said lot in accordance with reasonable standards established by the Association. There shall not be located on any lot any more than one (1) driveway which shall not exceed sixteen (16) feet in width.

11. NATIVE GROWTH: The native growth of such lots, such as trees, bushes, shrubs, or other vegetation whatever, shall not be permitted to be destroyed, removed, installed or planted from or on any lot without prior written approval of the Association, based upon a site plan, landscaping plan or planting plan submitted to the Association. In the event such growth is destroyed, removed, installed or planted, except as stated above, the Association may require the removal, replanting or replacement of same, the cost thereof to be borne by the lot owner.

12. CONSTRUCTION COMPLETION: When the construction of any residence is once begun, work thereon must be prosecuted diligently and must be fully completed within eight (8) months of the date that construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or building due to strikes, fires, national emergency or natural calamities.

13. ASSESSMENTS: The Association shall, in addition to all other powers granted to it herein and in its charter and by-laws, have the power and authority to levy and collect assessments (regular and special) from each lot owner:

(a) The owner of each residential lot shall, by the acceptance of a deed or other conveyance for such lot, be deemed to covenant and agree and be obligated to pay the Association: (i) annual assessments, dues or charges, and (ii) special assessments for unexpected or unbudgeted expenses, capital improvements, and other monetary obligations incurred by the Association in performing its duties and obligations.

(b) The annual assessments shall be due and payable on January 1 of the year for which they are assessed or may be payable in installments due monthly, quarterly or annually as determined in the sole discretion of the Association.

(c) Any special assessments shall be due and payable as determined in the sole discretion of the Association.

(d) All assessments or charges relating to lot shall be fixed, established, levied and collected on a uniform basis for each lot, except as may hereinafter be provided.

(e) Each annual and/or special assessment, when due, shall become a lien against the lot against which such assessments are made and shall continue as lien against such lot and shall be deemed to run with the land until such time as collected by the Association or paid in full.

(f) The funds arising from said assessments or charges may be used for any or all of the following purposes: maintaining, operating, improving and replacing common areas, and the facilities and improvements located thereon, maintenance and repair of drainage easements, signage and landscaping; protection of property; collecting and disposing of garbage, ashes, rubbish and the like; maintenance, improvement and lighting of the streets, roads, drives, rights of way, community land and facilities; employing watchmen; enforcing these restrictions; paying taxes, insurance premiums, legal and accounting fees, governmental charges of all kinds and descriptions, other indebtedness of the Association, and in addition, doing any other things necessary or desirable, in the opinion of the Association, to keep the property in neat and good order and to provide for the health, welfare and safety of owners and residents of MISTY HARBOUR.

(g) Upon the failure of the owner of the lot to pay any such assessment or charge, additional assessment, or installment thereof when due, the Association shall have the right to collect the amount thereof by an action at law against the owners as for a debt, and may bring and maintain such other suits and proceedings at law or at equity as may be available. Such rights and powers shall be deemed to run with the land and the successive owners of each lot, by the acceptance of deeds therefor, shall be deemed personally to assume and agree to pay all unpaid assessments or charges or additional assessments which have been previously levied against the property, and all assessments or charges or additional assessments as shall become a lien thereon during their ownership. Unpaid assessments or charges, additional assessments, or installments thereof, shall bear interest at the rate of one and one-half (1-1/2%) percent per month, or at the maximum legal rate, whichever is less, from the due date thereof, until paid. Annual assessments shall be delinquent on February 1 and special assessments at the expiration of thirty (30) days from their due date. All costs and reasonable attorney's fees incurred in collection of delinquent assessments, together with accrued interest, shall become a lien against the lot.

(h) The monies collected by virtue of the assessments or charges or additional assessments, or the lien provided by this section, shall be paid to the Association to be used in such a manner and to the extent as the Association may determine, in accordance with the preceding paragraphs hereof, for the benefit of the residents of Misty Harbour. The judgment of the Association in the making of assessments or charges or additional assessments and the expenditure of funds shall be final.

(i) The Association shall not be obligated to spend in any one calendar year all of the sums collected during said year by way of assessments or charges or additional assessments and may carry forward to surplus any balance remaining. The Association shall not be obliged to apply any such surplus to the reduction of charges in the succeeding year.

(j) The Association shall have authority, in its discretion, to borrow money to expend for the purposes set forth hereinabove upon such terms and security and for such periods as it may determine, and to repay said borrowings and the interest thereof from the assessments or charges or additional assessments provided for elsewhere in this Declaration.

14. ENTRY: The Association, its successors and assigns, and its agents are granted the right to enter upon any residential lot area, such entry to be made by personnel with suitable devices and equipment, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth not done by the owner, which in the opinion of the Association detracts from or is necessary to maintain the overall beauty, ecology, setting and safety of the property. Such entrance shall not be deemed a trespass. The Association and its agents may likewise enter upon any lot to remove any trash which has collected without such entrance and removal being deemed a trespass. The Association is authorized to make reasonable charges to the owner for such services, which shall become a lien upon the lot. The provisions of this paragraph shall not be construed as an obligation on the part of the Association to undertake any of the foregoing.

15. STREETS, EASEMENTS AND RIGHTS-OF-WAY:

(a) The Developer does not by any deed conveying any of said lots convey to the owner any of the land in any platted street and has and hereby reserves all easements for utilities, drainage or common areas, if any, shown on the recorded plat or plats of said subdivision and full rights of ingress and egress for itself, its agents, employees, and assigns over any part of the property for the purposes of installing and servicing the utilities and drains for which the easements are reserved. The Developer shall convey the same to the Association upon the sale of the last lot.

(b) No structures, including walls, fences, paving or planting shall be erected upon any part of the property which will interfere with the rights of ingress and egress provided in subpart (a) of this paragraph.

16. SUBDIVIDING: No lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Association. However, Developer hereby expressly reserves to himself, its successors or assigns, the right to replat any two (2) or more lots shown on the plat of any subdivision in order to create a modified building lot or lots; and to take such steps as are reasonably necessary to make such replatted lot suitable and fit as a building site, said steps to include, but not be limited to, the relocation of easements, walkways and rights of way to conform to the new boundaries of the said replatted lots, provided that no lot originally shown on a recorded plat is reduced by more than twenty (20%) percent from its original size.

17. COVENANTS AND RESTRICTIONS TO RUN WITH THE LAND: All of the covenants, conditions restrictions and reservations set forth herein shall run with the land, shall inure to the benefit of each owner and each owner, by accepting the deed to such premises, accepts the same subject to such covenants, conditions, restrictions and reservations and agreed for himself, his heirs, successors, administrators, executors, assigns and successors in interest to be bound by each of such covenants, conditions, restrictions and reservations, jointly, separately and severally. Each and every one of these covenants, conditions, reservations and restrictions is and are for the benefit of each owner of land

in the subdivision, or any interest therein and shall inure to and pass with each and every lot of said MISTY HARBOUR.

18. COVENANTS, AND RESTRICTIONS, ENFORCEABLE JOINTLY AND SEVERALLY: Each and every one of the covenants, conditions, restrictions and reservations contained herein shall be considered to be an independent and separate covenant and agreement and in the event any one or more of such covenants, conditions, restrictions and reservations shall for any reason be held to be invalid or unenforceable all remaining covenants, restrictions, and reservations shall nevertheless remain in full force, effect and virtue.

19. MODIFICATIONS AND AMENDMENTS: The right and power to amend or change any part or all of the restrictions, covenants and conditions herein set out is vested freely in the Developer until such time as seventy percent (70%) of the lots in MISTY HARBOUR have been sold and conveyed by the Developer. Thereafter, amendment of this Declaration shall require an affirmative vote of the owners of sixty-six and two-thirds (66-2/3) of the lots in the said MISTY HARBOUR. Such modifications and/or amendments to this Declaration of Covenants, Conditions and Restrictions shall be made and accomplished by the filing in the Office of the Register of Deeds of New Hanover County a declaration of amended restrictive covenants, which such amendments, modifications or additions to the restrictive covenants contained in this Declaration shall be made applicable to the conveyance of lots made subsequent to the recording of such declaration of amended restrictive covenants.

20. DURATION: All of the foregoing covenants, reservations, restrictions and conditions shall continue and remain in full force and effect at all times as against the owner of any lot in such premises, regardless of how he acquired title, for a period of time of twenty (20) years from the date hereof at which time these covenants, reservations, restrictions and conditions shall terminate and end and thereafter be of no further legal or equitable effect on such premises or any owner thereof; provided, however, that these covenants, conditions, reservations and restrictions shall be automatically extended for a period of ten (10) years, and thereafter in successive ten-year periods, unless on or before the end of one of such extension periods or the base period the owners of a majority of the lots in the subdivision shall by written instrument duly recorded in the New Hanover County Registry declare a termination of the same. Although these covenants, conditions, reservations and restrictions may expire as herein provided, any and all reversions for breach of these covenants, conditions, reservations or restrictions committed or suffered prior to such expiration shall be absolute. In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective,, then in that event such terms shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of North Carolina.

21. VIOLATIONS: In the event of a violation or breach of any of these covenants, conditions, restrictions or reservations by any lot owner, or agent of such owner, the Association or owner of any other property in MISTY HARBOUR, or any of them jointly or severally, shall have the right to proceed at law or equity to compel a compliance to the terms hereof or to prevent the violation or breach. In addition to the foregoing, the Association shall have the right, at its option, whenever there shall have been built on any lot any structure which is in

violation of these restrictions, to enter upon such property where such owner, if after thirty (30) days written notice of such violation it shall not have been corrected by the owner. Any such entry, abatement or removal shall not be deemed a trespass. The failure to enforce any covenants, restrictions, reservations or conditions contained in these Restrictions, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach, or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

22. ENFORCEMENT: The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, reservations, restrictions, liens and charges now or hereafter imposed by the provisions of this Declaration of Covenants, Conditions and Restrictions.

23. COST OF ENFORCEMENT: Should the Association employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions, or re-entry, by reason of such breach, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the owner of such lot or lots and the Association shall have a lien upon such lot or lots to secure payment of all such sums.

24. COMMON AREAS AND THEIR USE: Every owner shall have a right and easement of use and enjoyment in and to all common areas shown on any map or plat of MISTY HARBOUR, subject, however, to the following provisions:

- (a) The right of the Association to impose reasonable rules and regulations for the use and enjoyment of the common areas and facilities, and
- (b) The right of the Association to grant and convey to any public agency or authority easement or rights-of-way for utility services such as water, sewer, electric and telephone.

25. INSURANCE:

(a) The Association shall, at all times, keep the common area property insured against loss or damage by fire or other hazards normally insured against for the type of property involved at 100% of replacement cost, if such insurance is available, and such other risks as public liability insurance.

In addition, the Association shall provide liability and fidelity insurance coverage for its officers, directors and those persons serving on committees established by the Association. Such insurance shall be in such amounts and with such companies as determined by the Board of Directors of the Association.

The premiums for all such insurance shall be paid by the Association from the assessments it levies against the owners.

26. MAINTENANCE: Each owner of a lot in MISTY HARBOUR, by accepting a deed of conveyance to such lot, agrees to, at all times, maintain the landscaping, lawn, dwelling, trees and other growth located on the lot in good condition and in a neat and orderly manner. The failure to do so shall be grounds for the Association, or its agents, to perform such work or repair as may be necessary, in the sole discretion of the Association, to place

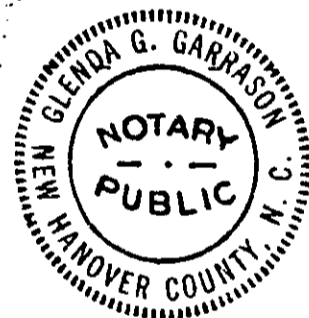
such property in good and neat condition at the sole expense of the owner. Any costs incurred by the Association under this paragraph shall be paid by the owner and the owner's failure to promptly pay such amount shall result in a lien against the owner's property in the amount due the Association.

27. INTERCHANGE BETWEEN ASSOCIATION AND ARCHITECTURAL REVIEW COMMITTEE: Under any provision of this Declaration which relates to the submission, review or approval of any plans, specifications, repairs, construction or any other matter relating to the construction of improvements where the word Association is used the word Association shall mean the Architectural Review Committee.

28. PARKING OF BOATS: Each Owner may park or store on the lot not more than two (2) boats owned by the Owner. Such boats shall be placed on the lot beside or behind dwelling located on a lot. Such boats shall be kept in a clean and orderly condition at all times.

IN WITNESS WHEREOF, OTIS W. TAYLOR has cased this instrument to be signed in its name by its President and Secretary, all on the 19TH day of AUG., 1986.

*Otis W. Taylor*  
OTIS W. TAYLOR



STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Glenda G. Garrason, a Notary Public in and for the State and County aforesaid, do certify that Otis W. Taylor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 19TH day of AUG., 1986

STATE OF NORTH CAROLINA  
New Hanover County  
The Foregoing Certificate of  
Glenda G. Garrason, a Notary  
Public,

*Glenda G. Garrason*  
Notary Public  
My Commission Expires: 10-24-89

is certified to be correct.  
This the 19th day of August 19 86

Rebecca P. Tucker, Register of Deeds  
By *Donald C. Smith Jr.*  
Deputy