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JAYCE M. SWICEGOOD
REGISTER OF DEEDS
PENDER COUNTY, NC

NORTH CAROLINA
PENDER COUNTY

Recorded and Verified
Joyce M. Swicegood
Register of Deeds
Pender County, NC
[Signature]

**DECLARATION OF RESTRICTIVE AND
PROTECTIVE COVENANTS FOR TOPSAIL COVE**

**THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE
COVENANTS**, made this 30th day of March, 2005, by TP,
INC., a North Carolina Corporation, hereinafter called "Declarant."

WITNESSETH:

THAT WHEREAS, the Declarant is the owner of the real property described in Paragraph I of this Declaration and is desirous of subjecting said real property to the protective covenants hereinafter set forth, each and all of which is and shall inure to the benefit of and pass and run with said property, and each and every lot or parcel thereof, and shall apply to and bind the successors in interest and any owner thereof.

NOW THEREFORE, the Declarant hereby declares that the real property in and referred to in Paragraph 1 hereof is and shall be held, transferred, sold and conveyed subject to the protective covenants set forth below:

1. **DESCRIPTION OF REAL PROPERTY:** The real property which is, and shall be held, transferred, sold and conveyed subject to the protective covenants set forth in the articles of this Declaration is located in the County of Pender, State of North Carolina, and is more particularly described as follows:

BEING all of Lots numbered One (1) through Fourteen (14), inclusive, as shown upon plat entitled "Topsail Cove," prepared by Mark Padgett, RLS No. 2639, dated 7/22/04, and recorded in Map Book 39, Page 25, Slide 523, Pender County Registry. Said recorded plat being incorporated herein by this reference for the purpose of providing a more particular description.

All Lots are being conveyed less and except West Wilmington Avenue and Anchor Drive, which will be maintained as private streets for the Owners and their successors in interest by the Topsail Cove Homeowners Association, said Association to be formed by Declarant. Every owner in the Topsail Cove Subdivision shall be a member of the Topsail Cove Homeowners Association.

The *Public Easement* as shown on the referenced map shall be conveyed to and maintained by the **Topsail Cove Homeowners Association**, and shall be for use of the general public. The *Recreational Easement* as shown on the referenced map shall be conveyed to and maintained by the **Topsail Cove Homeowners Association**, and shall be for use of the owners, residents, and guests of Topsail Cove.

2. **USES:** No lot, lots or portions thereof shall be put to any use other than for residential purposes, except that any lot may be used by the Declarant for a street or roadway. **The Town of Surf City will not assume any financial responsibility for any damages that may occur due to maintenance of sewer and water lines.**

3. **LAND USE, BUILDING TYPE AND ARCHITECTURAL REVIEW:** Only single-family detached residences shall be built on Lots 1, 2, 9, 10 and 14. Duplex dwellings or single-family residences may be built on Lots 3, 4, 5, 6, 7, 8, 11, 12 and 13. The height of each house shall be determined by the limitations set by the Town of Surf City. A private garage is permitted, which may contain living quarters. Such other outbuildings are permitted as may be reasonably appurtenant to the dwelling, provided that the same are constructed in line with the general architectural design and construction standards as used in the dwelling itself. All construction shall be custom built on the lot and no old building constructed elsewhere shall be moved on to the lot for residential purpose. No mobile homes, doublewides or pre-manufactured homes or any unit requiring a Division of Motor Vehicles Certificate of Title shall be placed or constructed on any numbered lot in the subdivision hereinabove described. This covenant shall not be construed as prohibiting the use of a new single-family detached dwelling as a model home for sales purpose. Construction of gazebos behind dwellings and on piers and docks shall be permitted provided that the walls of such gazebos shall not be constructed of solid or opaque material; gazebos shall not exceed 150 square feet of roof area, screens, lattice and glass. A single-family residential unit shall not be used, nor shall residential purposes as herein set out be defined, as covering the following types of use: fraternities, sororities, family care homes, boarding homes, or any similar type of residence.

Architectural Review for purposes of construction of a dwelling remains with the Declarant until such time as Declarant has sold 80% of the lots. Upon the sale of 80% of the Lots, Declarant shall pass control to the **Topsail Cove**

Homeowners Association, which shall then have architectural review responsibility.

4. **ASSESSMENTS:** The monthly Regular Assessment provided for herein shall commence as to each Owner of a Lot, except Declarant, on the first day following the initial conveyance of the Dwelling to the Owner and shall be adjusted according to the number of days remaining in the month. The Declarant, its successors and assigns, shall not be required to pay the Regular Assessment for any Lot which it owns until such time as Declarant transfers the Lot to a third party. The Board of Directors shall fix the amount of the monthly Regular Assessment to be paid by each Member against each Lot at the beginning of each calendar year, except that Declarant shall set the monthly assessment until the Development period has ended. Written notice of the monthly Regular Assessment shall be sent to every Member subject thereto. The Board of Directors shall establish the due dates.
5. **NATIVE GROWTH:** The native growth of such premises shall not be permitted to be destroyed or removed except as necessary to erect structures, to construct driveways and other graveled areas, and a reasonable area surrounding the buildings. The Developer, its successors or assigns, reserves the right to enter upon and cut grass, weeds, or undergrowth on any Lot or easement, but shall be under no obligation to do so.
6. **STREETLIGHTING AGREEMENT:** The developer reserves the right to subject the real property in this subdivision to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to an electric utility company by the owner of each dwelling.
7. **DWELLING QUALITY AND SIZE:** The ground floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than 1500 square feet of heated area to a one-story dwelling, nor less than 1500 square feet of heated area for a dwelling of more than one story. No duplex shall have less than 1400 square feet of heated area, exclusive of open porches and garages.
8. **BUILDING LOCATION:** Subject to Storm Water Management Restrictions contained in Section 19, *infra*, no building shall be located on any numbered Lot nearer to the front line or side street line than the minimum building line shown on the recorded plat. No residential building shall be located on any numbered Lot nearer than 20 feet from the front Lot line, and no building shall be located nearer than 15 feet from the rear lot line nor nearer than 7.5 feet from the side lot lines. For the purpose of this covenant, eaves, steps, open porches and carports shall not be considered as part of a building provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

9. **SUBDIVISION:** No lot shall be subdivided if the result of each subdivision is separate ownership of less than a whole lot; provided, however, that the Declarant, its successors or assigns, reserves the right to make minor boundary line adjustments between lots so long as said adjustments does not extend 10% of the total area of a given Lot.
10. **NUISANCES:** No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted to remain on a lot. No automobile, or vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands except in an enclosed garage. Declarant or Association, its successors or assigns, reserves the right to enter upon and cut grass, weeds, or undergrowth on any Lot or easement, but shall be under no obligation to do so. The Declarant or Association may contract for, and assess to owner, any maintenance necessary to enforce this covenant.

If any dwelling located on a Lot is destroyed by fire or other casualty, all rubbish and debris shall be removed with promptness after such fire or other casualty. In no event shall debris or rubbish remain on a lot longer than two (2) months after such fire or other casualty, provided, however, no such removal or demolition shall be required if prohibited by court order or if a legal or insurance investigation concerning such fire or casualty is ongoing.

11. **EASEMENTS:** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channel in the easements. The easement area of each Lot and all improvements on it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

The grantor reserves for itself, its successors or assigns, an easement and right at any time in the future to grant a right of way under, over and along the side, rear and front property lines of each and every Lot in the subdivision described herein, for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone services, drainage, or other utilities including water and sewer services.

12. **LIVESTOCK AND POULTRY:** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. Goats, cows, chickens, swine, horses and ponies shall not be considered household pets.

13. **SATELLITE RECEPTION AND FUEL TANKS:** All satellite dishes and similar apparatus shall be located indoors so as not to be visible. Mini satellite dishes 24 inches and under and attached to the house are exempt from this article. All fuel tanks and gas bottles shall be located so as not to be visible from the streets or from neighboring Lots.
14. **SIGNS:** No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one square foot parallel to the building line, one sign of not more than three square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.
15. **FENCES:** No fence shall be erected without written permission from Declarant.
16. **GARBAGE AND REFUSE DISPOSAL:** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Garbage cans shall not be permitted to remain in the front yard except for normal garbage pick up.
17. **SIGHT DISTANCE AT INTERSECTIONS:** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet from the intersection of the street line, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
18. **TEMPORARY STRUCTURES:** No structure of a temporary character, trailer, manufactured home, modular home, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. No trailer, motor home, camper or like vehicle shall be parked on any Lot at any time for any purpose nor shall any such vehicle be allowed to remain on any lot at any time for any purpose unless it is parked behind the main dwelling structure or placed inside the carport or garage.
19. **TERM:** These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time such covenants shall be automatically extended for successive periods of ten (10) years unless an

instrument signed by a majority of the then owners of the Lots has been recorded, agreeing to change said covenants in whole or in part.

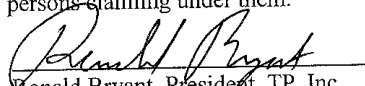
20. **STORM WATER MANAGEMENT REQUIREMENTS:**

- A. The following covenants are intended to ensure ongoing compliance with State Storm water Management Permit Number SW8010637, as issued by the Division of Water Quality Under NCAC 2H. 1000.
- 1) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the storm water management permit.
 - 2) These covenants are to run with the land and be binding on all persons and parties claiming under them.
 - 3) The covenants pertaining to storm water may not be altered or rescinded without the express written consent of the State of North Carolina Division of Water Quality.
 - 4) Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.
- B. The following is the maximum allowable built upon area per lot for each Lot is Three Thousand Eight Hundred Seventy-Two (3,872 sq.ft.) Square Feet.
- 1) This allotted amount includes any built upon area constructed within the Lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wood decking or the water surface of swimming pools.
 - 2) Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is strictly prohibited by any person.
 - 3) Each lot will maintain a thirty foot (30') wide vegetated buffer between all impervious areas and surface waters.
 - 4) All roof drains shall terminate at least thirty feet (30') from the mean high water mark of surface waters.

21. **COMPLIANCE WITH WETLAND REGULATIONS:** In compliance with Title 15 NCAC 2H 0050, the following DEED NOTIFICATION shall be recorded in the Office of the Register of Deeds, Pender County, North Carolina prior to the conveyance of said lots. DEED NOTIFICATION shall apply to Topsail Cove Subdivision, Lots 3, 4, 5, 10, 12, and 13, in Pender County, North Carolina as shown on plans titled Topsail Cove Subdivision prepared by Walton Engineering as revised on July 23, 2002.

Date: ^{AD} 5-30-05

A portion of this lot has been determined to meet requirements for Designation as a regulatory wetland. Any subsequent fill or alteration of this wetland shall conform to the requirements of the State wetland rules adopted by the State of North Carolina, and in force at the time of alteration. The intent of this provision is to prevent additional wetland fill, so the property owner should not assume that a future application for fill would be approved. The property owner shall report the name of the subdivision in any Application pertaining to said wetland rules adopted by the State of North Carolina, and, therefore, benefits may be enforced by the State of North Carolina. This covenant is to run with the land and shall be Binding on all parties and all persons claiming under them.


Ronald Bryant, President, TP, Inc.

22. **ENFORCEMENT OF RESTRICTIONS:** In the event of a violation or breach of any of these restrictions, covenants, agreements and conditions by any person or concern claiming by, through or under the undersigned, or by virtue of any judicial proceedings, the undersigned, its successors and assigns, the State of North Carolina, Topsail Cove Homeowners Association, and the owners of the numbered Lots in the subdivision, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms thereof or to prevent the violation or breach of any of them. The failure to enforce any right, reservation, restriction, or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach, or as to a breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement.
23. **MODIFICATION OF RESTRICTIVE COVENANTS:** Except for Storm Water Requirements, these restrictions are subject to being altered, modified, cancelled or changed at any time as to said subdivision as a whole or as to any subdivided Lot or part thereof. An amendment shall be by written document executed by the Declarant or its successors in title, and/or by the owners of not less than sixty-seven percent (67%) of the subdivided Lots or parts of said subdivision to which these restrictions apply. Amendment(s) to this document

shall be recorded in the Office of the Register of Deeds of Pender County, North Carolina. If the Declarant owns sixty percent (60%) or more of the subdivided Lots, the Declarant may alter or amend these covenants without consent of anyone.

24. **SEVERABILITY:** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN TESTIMONY WHEREOF, the Declarant has caused this instrument to be executed, this day and year first above written.

TP, Inc., a North Carolina Corporation

By: Ronald Bryant (Seal)
President

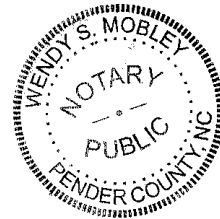
STATE OF NORTH CAROLINA
COUNTY OF Pender

I, Wendy S. Mobley, a Notary Public of the County and State aforesaid, do hereby certify that Ronald Bryant, President of TP, Inc., appeared before me and that said writing was signed by him on behalf of said corporation by its authority duly given. And the said Ronald Bryant acknowledged the said writing to be the act and deed of the corporation.

This the 30th day of March, 2005.

Wendy S. Mobley
Notary Public

My commission Expires: 12-16-06



NORTH CAROLINA - PENDER COUNTY: The foregoing (or annexed) certificate of Wendy S. Mobley is certified to be correct. This 31 day of marc, A.D. 2005
JOYCE M. SWICEGOOD - Pender County Register of Deeds
By: Joyce Swicegood Deputy/Assistant
Register of Deeds