

*For Amendment to this instrument refer to BK 905 Pg. 691
12-30-90*

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Prepared by: LANIER & FOUNTAIN, ESQS.

1988 MAR 17 PM 1 29

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
BERMUDA LANDING

THIS DECLARATION, made on the date hereinafter set forth by M. P. BOSTIC, a citizen and resident of the State of North Carolina, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Stump Sound Township, County of Onslow, State of North Carolina, which is more particularly described as:

Being all of Lot(s) 11-7; 11-8; 11-9; 11-10; 11-11; entitled "Final Plat, Bermuda Landing, Property of of M.P. Bostic, Stump Sound Township, Onslow County, North Carolina", dated June, 1986, revised November 19, 1987 and revised March 15, 1988, prepared by Cowan and Jones, P.A., Registered Land Surveyors, said plat being recorded in Book 25, Page 97.

Subject to restrictive covenants appearing of record at Book 870, Page 170.

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.

*For Declaration of Annexation refer to BK 1056 Pg. 232-6-18-92 MMT
" " " " " 1091 " 159-1-19-93 "*

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to BERMUDA LANDING 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.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Eligible First Mortgage Holder" shall mean any holder of a first mortgage, who files with the secretary of the association, notice that they are holding a mortgage on the lot.

Section 5. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The "Common Control Area" shall mean the exterior and roofs of all structures located on the described premises.

Section 6. "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 7. "Declarant" shall mean and refer to M. F. BOSTIC, his heirs, executors, administrators, and assigns if such heirs, executors, administrators or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owners' 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 provision:

a. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

b. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during

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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 and 51% of the mortgage holders has been recorded.

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

Section 3. Common Control Areas. The Association shall govern any and all repairs, replacements, maintenance and painting of the Common Control Areas.

Section 4. Exterior Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. 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. Voting Rights. 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

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than one person holds an interest in any Lot, all such persons shall be members. 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 member(s) 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 the fifth anniversary of the conveyance of a Lot or other parcel within the development.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each 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 changes, and (2) Special assessments for capital improvements, and/or master or group hazard and/or flood insurance policy premiums, 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 continued 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 in the Properties and for the improvement and maintenance of any Common Area; and for the improvement and maintenance of any Common Control Area and of the homes situated on the properties. In addition, sums shall be collected and amassed to establish a capital account for capital improvements and repairs to the properties, and to acquire one or more master or group hazard and/or flood insurance policies.

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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 Five Hundred and no/100 (\$500.00) Dollars per Lot and may be paid monthly, quarterly or semi-annually as determined by the association.

a. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten (10%) percent above the maximum assessment for the previous year without a vote of the membership.

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above ten (10%) percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

c. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

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. Special Assessments for Insurance. In addition to any other assessments, the Association may levy a special assessment to defray the cost of premium due upon any master or group policy of hazard and/or flood insurance which the Association may be able to acquire for the benefit of the owners, provided that any such assessment shall apply only to such lots as are included under said master or group policy. The Board of Directors of the Association shall have the sole and unfettered discretion as to whether to acquire such insurance, and as to which lots shall be included under such master or group policy.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any

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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 (60%) percent 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 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Each unit shall be assessed two (2) months' dues at the time of transfer from Declarant, to be used as a contribution to working capital fund of the Association. 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 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 9. 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 rate of twelve (12%) percent per annum or such other rate as the Association may determine. 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.

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Section 10. 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 or alteration 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 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 such 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

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owner who makes use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the

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wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenance to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provision of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all their arbitrators.

ARTICLE VII

USE RESTRICTIONS

Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single family townhouse dwelling not to exceed Three stories in height. Any building erected, altered, placed or permitted to remain on any Lot shall be subject to the provisions of the Article V of this Declaration of Covenants, Conditions, and Restrictions relating to architectural control.

Section 2. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisances to the neighborhood.

Section 3. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.

Section 4. Recreational Vehicles. No boat, motor boat, camper, trailer, motor or mobile home, or similar type vehicle, shall be permitted to remain on any portion of the Properties, unless by consent of the Association in which event such vehicles shall be placed in the area or areas designated by the Association.

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Section 5. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other common household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are at all times properly leashed or confined in an approved area, and are not a nuisance to other Owners.

Section 6. Outside Antennas. No outside radio or television antennas shall be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 7. Window Coverings. All drapes, curtains, or other similar materials hung at windows, or in any manner so as to be visible from the outside of any building erected upon any Lot shall be of a white or neutral background or materia..

Section 8. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot shall be clear, white, or non-frost lights or bulbs.

ARTICLE VIII

EASEMENTS

Section 1. Utility and Drainage. 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 material shall be placed or permitted to remain which may interfere with the installation and maintenance of drainage, or which may obstruct or retard the flow of water.

Section 2. Exterior Maintenance. The Association, acting through its officers, agents, servants and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance called for in the Article I of this Declaration.

Section 3. Emergency Repairs. The Association is hereby granted a permanent easement to enter any properties, including any individually owned Lot, for the sole purpose of effectuating emergency repairs.

Section 4. Ingress and Egress. Each Lot owner shall have an unrestricted right of ingress and egress to their Lot. This right shall pass and inure to the benefit of all future Lot owners.

Section 5. Common Area. Easements are also reserved over those portions of the Common Area that may be necessary or required to accommodate

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overhanging eaves or other cantilevered construction which may encroach upon the Common Area on the air and light space above such Common Area.

ARTICLE IX

INSURANCE AND BONDS

Section 1. Hazard Insurance. The Association shall obtain and maintain a policy of property insurance in a sufficient amount to cover One Hundred (100%) percent of the replacement costs of all the common areas, except for those that are normally excluded from coverage, such as land, excavation, etc., with the premiums of said insurance being paid as a common expense. All Lot owners are required to maintain insurance policies on their individual Lots and all insurance policies shall be of a sufficient amount to cover One Hundred (100%) percent of the current replacement cost of all improvements that may be located on the Lot. The Association shall be furnished with a copy of the current insurance policies.

Section 2. Liability Insurance. The Association shall obtain and maintains Comprehensive General Liability Insurance policy covering all common areas, public ways and other areas that are under its supervision. The policy shall provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. The premium for said policy shall be paid by the Association and assessed as a common expense.

Section 3. Flood Insurance. The Association shall obtain and maintain a Flood Insurance policy to cover any common area buildings or any other common area property which shall lie in a Special Flood Hazard area as defined by the Federal Emergency Management Agency. The amount of insurance should be at least the lesser of One Hundred (100%) percent of the current replacement cost of all buildings and other insurable property located in the flood hazard area or the maximum coverage available for the property under the National Flood Insurance Program. The premium for said insurance shall be assessed as a common expense. In addition, Flood Insurance shall be obtained and maintained by any Lot Owner in an amount at least the lesser of One Hundred (100%) percent of the current replacement cost of all improvements and other

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insurable property totaled in the flood hazard area or the maximum coverage available for the property under the National Flood Insurance Program.

Section 4. Fidelity Bond. The Association shall have Fidelity Bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. A management agent that handles funds for the Association shall be covered by its own Fidelity Bond.

Except for Fidelity Bonds that a management agent obtains for its personnel, all other bonds shall name the Association as an obligee and their premiums shall be assessed by the Association as a common expense.

The Fidelity Bonds shall be in a sufficient amount to cover the aggregate of the following:

- (a) the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force,
- (b) the sum of three (3) months assessments on all amounts in the project, and
- (c) All reserve funds of the Association.

Section 5. Notice to Association and Mortgagors. All insurance policies and bonds must include a provision that calls for ten (10) days written notice to the Association and each holder of a first mortgage before the bond or insurance can be cancelled or substantially modified for any reason.

ARTICLE X

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 wise affect any other provisions which shall remain in full force and effect.

Section 3. Document Availability. The Association shall have current copies of the Declarations, By-Laws, and other rules concerning the project as

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well as its own books, records and financial statements available for inspection by Lot owners or by holders, insurers and guarantors of first mortgages that are secured by Lots and improvements within the development. These documents shall be available during normal business hours and under other reasonable circumstances.

There shall be an annual audited statement prepared each year with copies made available to the Lot owner, and any holder, insurer or guarantor of any first mortgage that is secured by a Lot within the development.

Section 4. Condemnation, Destruction, or Liquidation. The Association will be deemed to represent the owners in any losses or proceeds from condemnation, destruction or liquidation of all or a part of the common areas and shall have the authority to negotiate, settle, and otherwise make agreements on behalf of all Lot owners and any and all sums payable shall be distributed to the Lot owners and their mortgage holders. Any and all funds shall be distributed to each of the Lot owners in equal shares. However, all first mortgage holders shall be given 10 days notice prior to any disbursements to the Lot owners.

Section 5. Limitation on Ability to Sell and Lease. No Lot owner's right to sell, convey, transfer or mortgage his Lot shall be restricted.

Section 6. Annexation. Additional residential property, Common Area and Common Control Area may be annexed to the Properties with the consent of two-third (2/3) of each class of members. Additional land within the area shown in Map Book 25, Page 17, of the Onslow County Registry, may be annexed by

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the Declarant without the consent of members within five (5) years of the date of this instrument, provided that the annexation is in accord with the general plan of development and that the number of units does not exceed 65 in number.

Section 7. Mortgagee Approval. The following actions will require the prior written approval of at least fifty one (51%) percent of the eligible mortgage holders: Annexation of additional properties, other than contained herein, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 8. 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 during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the Lot owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot owners. Any amendment must be recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, as hereunto set his hand and seal this 23 day of December, 1987.

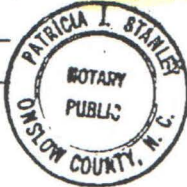
[Handwritten Signature]
M. F. BOSTIC (SEAL)

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW

I, a Notary Public of said County and State, do hereby certify that M. F. BOSTIC personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes and intents therein expressed.

Witness my hand and seal, this 23 day of December, 1987.

Patricia J. Stanley
Notary Public
My Commission Expires: 1-21-91



NORTH CAROLINA, ONSLOW COUNTY
The foregoing certificate(s) of Patricia J. Stanley

Notary(ies) Public is (are) certified to be correct. This instrument was presented for registration and recorded in this office in Book 870 Page 170 This 17th day of March, 1988 A.D. at 1:24 o'clock P. M.
Mildred M. Akmal Register of Deeds, Onslow County