

Prepared by: John A. McLendon, Jr., Attorney  
Schell Bray Aycock Abel & Livingston P.L.L.C.

NORTH CAROLINA - BRUNSWICK COUNTY

**Declaration of Protective Covenants and Easements  
for  
SeaScape at Holden Plantation  
Marina Village Homesites**

THIS DECLARATION OF PROTECTIVE COVENANTS AND EASEMENTS is made as of February 28, 2001, by **SeaScape at Holden Plantation, Inc.**, a North Carolina corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located in Brunswick County, North Carolina, and more particularly described as follows:

Being all of the property shown on those plats of survey for the **Marina Village of SeaScape at Holden Plantation**, recorded in **Map Cabinet 24**, **Pages 37, 38 and 39**, Brunswick County Registry (collectively, the "Plat") (the numbered lots as shown on the Plat are hereinafter referred to individually as a "Homesite" and collectively as the "Homesites").

WHEREAS, pursuant to an Amendment to Master Declaration executed by Declarant and recorded in Book **1438**, Page **1329**, Brunswick County Registry, the above described property has been subjected to that Master Declaration of Covenants, Conditions, Restrictions and Easements recorded in Book 1347, Page 274, Brunswick County Registry, as amended (the "Master Declaration");

WHEREAS, the Master Declaration establishes certain covenants, conditions, restrictions and easements running with the land, including provisions setting forth certain functions and duties of SeaScape at Holden Plantation Property Owners Association, Inc. (the "Association") and its Architectural Control Committee (the "Architectural Control Committee"); and

WHEREAS, Declarant desires to subject the Homesites to certain additional covenants, conditions, restrictions and easements for the purpose of protecting the value and desirability thereof and of other adjacent properties.

NOW, THEREFORE, Declarant hereby declares that the Homesites shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements, which

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shall run with the land and be binding upon all parties having any right, title or interest in the Homesites or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**1. Land Use and Building Type; Walkways and Piers on Waterway Homesites; No Riparian Rights in Marina Basin or Channel.**

(a) The Homesites shall be used for residential purposes only, and no structures shall be erected or allowed to remain on any Homesite except one detached single-family dwelling not exceeding forty (40) feet in height (measured from the center of the finished grade at the front of the dwelling to the highest point of the roof), a private garage located on the ground level of the dwelling, porches, decks, patios, trellises and a swimming pool; provided that no swimming pool shall be permitted on Homesites 353-356 or Homesites 369-381. No dwelling shall be erected or allowed to remain on any Homesite unless the construction of such dwelling is substantially performed on the Homesite. No modular home, mobile home, manufactured home or geodesic dome shall be erected or allowed to remain on any Homesite. No street shall be laid out or opened across or through any Homesite. No Homesite or any structure located thereon shall be used for the manufacture or sale of any article or for any commercial purpose whatsoever, or for conducting any business, trade or profession that involves the coming and going of customers or suppliers to and from the Homesite; provided, however, that a Homesite may be used for a temporary sales office and/or model with the prior written consent of Declarant.

(b) Piers and related improvements located on, adjacent to, or connected to any of Homesites 339-352 and 382-383, or within the riparian access area of any such Homesite along the Atlantic Intracoastal Waterway, shall be restricted by and subject to the provisions of a separate Declaration of Shared Walkway and Pier Easements to be recorded in the Brunswick County Registry after this Declaration of Protective Covenants and Easements. Except as expressly allowed and provided for in said Declaration of Shared Walkway and Pier Easements, no pier, dock, mooring, boatlift, boat slip or similar structure shall be erected or allowed to remain on, adjacent to, connected to, or within the riparian access area of any such Homesite.

(c) Declarant plans to excavate a marina basin and channel within the Proposed Marina Basin tract shown on the Plat. Homesites located adjacent to the Proposed Marina Basin tract are intended to be separated from the waters of the marina basin and channel by a strip of land and shall not have riparian rights in the marina basin or channel. In the event that any portion of any Homesite touches or is located within the waters of the marina basin or channel, due to the as-built location of the marina basin bulkhead wall or due to shifting of said wall or for any other reason, all riparian rights are hereby severed from such Homesite and retained by Declarant, and such rights shall be appurtenant to and shall run with the title to the Proposed Marina Basin tract. Without limiting the foregoing, the ownership of any Homesite located adjacent to the Proposed Marina Basin tract shall not include access rights or rights to erect piers or docks, or to moor or tie up boats, in the Proposed Marina Basin tract.

**2. Resubdivision and Combination.** No Homesite or Homesites shall be resubdivided, combined or any boundary lines changed without the written approval of Declarant. In the event that any such change is approved, the resulting Homesite or Homesites shall be shown on a recorded plat and the covenants, conditions, restrictions and easements set forth herein shall apply to each resulting Homesite.

**3. Architectural Control.**

(a) All proposed improvements and landscaping, including any alterations or additions, on any Homesite must be reviewed and approved by the Architectural Control Committee. By way of illustration and not of limitation, improvements requiring approval shall include any dwelling, paving, fence, wall, walkway, exterior lighting, exterior painting or ornamental or functional exterior features (including flags, planters, statues, lawn ornaments, bird feeders and bird baths, any of which ornamental or functional exterior features may be prohibited by the Architectural Control Committee). Any proposed pier, boatlift or floating dock must be reviewed and approved by the Architectural Control Committee and shall be subject to additional restrictions as hereinabove provided.

(b) The review and approval process shall be conducted in accordance with the Master Declaration and the Architectural Design Standards and Guidelines adopted by the Architectural Control Committee, as amended from time to time. Prior to commencement of clearing, grading or construction, the owner shall submit an application to the Architectural Control Committee and a complete set of proposed construction plans including: (i) site plan showing all easements and setbacks as shown on the Plat, any applicable building envelope or build-to line, and the proposed locations of the septic system (including any required repair area) and all impervious surfaces; (ii) erosion control plan; (iii) clearing and grading plan; (iv) foundation plan; (v) floor plan and elevation drawings of all sides of the proposed structure(s); (vi) landscaping plan; and (vii) such other information required by the Architectural Control Committee. The Architectural Control Committee shall have the right to require an application fee and a construction bond or deposit, as provided in the Master Declaration.

(c) Once construction of a dwelling has been commenced, it must be completed and ready for occupancy within twelve (12) months. All landscaping shall be finished upon completion of the dwelling, weather permitting, and in no event later than one hundred twenty (120) days after the date the dwelling is occupied. Upon written request of the owner and for good cause shown, the Architectural Control Committee may, in its sole and absolute discretion, extend the time for completion of construction. No dwelling shall be occupied until it has been substantially completed in accordance with the approved plans as evidenced by a certificate of completion issued by the Architectural Control Committee; provided that in no event shall a certificate of completion be construed as providing any assurance regarding the quality, fitness or suitability of design, materials or construction, or compliance thereof with any applicable permits, building codes or other laws.

4. **Dwelling Size.** No dwelling shall be erected or allowed to remain on a Homesite if the total floor area of the heated space within the roof line of the main structure, excluding any basement, garage and one-story porches, is less than the following specified minimum for such Homesite:

Homesites 318-386 1,800 square feet

5. **Building Location and Setbacks; Building Envelope and Build-To Line.** The Architectural Control Committee shall have the authority to determine the specific location of any dwelling or other structure on any Homesite; provided that no dwelling shall be erected or allowed to remain on any Homesite nearer to any property line than the minimum setback lines shown or described on the Plat. Each Homesite shall have a building envelope, as indicated by dashed lines on the Plat. The approximate location and dimensions of the building envelope can be approximated using the scale on the Plat. The Architectural Control Committee shall determine the exact location and dimensions of each building envelope. The dwelling on each lot must be built within the building envelope as determined by the Architectural Control Committee. If a lot has a build-to line, as set forth in a table on the Plat, the first architectural element on the build-to side of the dwelling (such as a facade, porch or deck) must abut the build-to line. The Architectural Control Committee, in its discretion, shall have authority to modify or waive the building envelopes and build-to lines.

6. **Impervious Surface Coverage.** Each Homesite is limited to a maximum of 5,000 square feet of built upon area. This allotted amount includes any built upon area constructed within the Homesite boundaries, and that portion of the street right of way between the lot line and the edge of the pavement (back of the curb). The portion of the driveway located within the right of way is included in this allotted amount, but any sidewalk constructed by Declarant is not included (sidewalks and streets have been allotted separately). 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. Filling in, piping or altering any vegetated conveyances (ditches, swales, etc.) is prohibited, except for average driveway crossings. A thirty (30) foot vegetated buffer must be maintained between all built upon area and the mean high water line of surface waters. The restrictions in this paragraph are required by the stormwater permit issued by the State of North Carolina, Department of Environment and Natural Resources, Division of Water Quality.

7. **No Outbuildings; Pools; No Temporary Structures.**

(a) No detached garage, shed, workshop, pool house or other outbuilding shall be erected, placed or allowed to remain on any Homesite. No pool shall be constructed, placed or allowed to remain on any Homesite without the prior written approval of the Architectural Control Committee.

(b) No structure of a temporary character shall be erected, placed or allowed to remain on any Homesite, nor shall any building materials be stored on any Homesite. No tent, camper, garage or other outbuilding shall be used as a temporary or permanent residence.

**8. Fences and Walls; No Playground Equipment; Signs.** No fence or wall shall be erected or allowed to remain on any Homesite without the prior written approval of the Architectural Control Committee. No chain link fences shall be approved. No dog pen, kennel or playground equipment shall be erected or allowed to remain on any Homesite. No billboards, posters or signs of any kind shall be erected or allowed to remain on any Homesite, except (i) a name and address sign, and (ii) a temporary sign reflecting construction of a dwelling on such Homesite by a licensed contractor, the design of which must be approved by the Architectural Control Committee.

**9. Outside Antennas and Satellite Dishes.** No outside radio or television antennas, satellite dishes or similar devices shall be erected or allowed to remain on any Homesite, except as permitted by the Architectural Design Standards and Guidelines adopted by the Architectural Control Committee, as amended from time to time.

**10. Boats, Trailers and Certain Motor Vehicles.** No boat, watercraft, trailer, bus, camper, motor home, recreational vehicle, commercial vehicle, or inoperative or unlicensed vehicle shall be parked for longer than twenty-four (24) hours on any Homesite, except in the garage on the ground level of the dwelling (a standard size pickup truck maintained for personal use shall not be considered a commercial vehicle for purposes of this restriction). Violators may have their boat, watercraft, trailer or vehicle towed by the Association at the owner's expense. No boat, watercraft, trailer, or vehicle of any type shall be stored, either permanently or temporarily, on any Homesite prior to completion and occupancy of the dwelling on such Homesite.

**11. Storage Receptacles.** The placement, screening and maintenance of fuel storage tanks and outdoor receptacles for garbage, trash or lawn debris shall be governed by the Architectural Control Committee.

**12. Outdoor Clothes Drying Structures.** No outdoor clothes poles, clothes lines or similar structure shall be placed or allowed to remain on any Homesite.

**13. Animals; Nuisances.** Dogs, cats and other household pets shall be permitted, provided that they are not kept or maintained for commercial purposes and further provided that they are kept and maintained in compliance with all applicable laws and ordinances and any rules or regulations adopted by the Executive Board of the Association relating thereto. Otherwise, no animals, livestock or fowl of any kind shall be kept or allowed to remain on any Homesite for any purpose. No noxious, offensive or illegal activities shall be conducted upon any Homesite nor shall anything be done on any Homesite which is a nuisance or an annoyance to the community.

14. **Removal of Trees.** No living tree four (4) inches or more in diameter at four (4) feet high from ground elevation, or any flowering tree or shrub, shall be cut without the prior written consent of the Architectural Control Committee.

15. **Maintenance of Homesites and Improvements.** All Homesites shall be maintained in a slightly condition, free of debris, rubbish, weeds and high grass, and any improvements on the Homesites shall be maintained in a reasonable and prudent manner, all to a standard which is harmonious with that of other property within the development, as determined by the Architectural Control Committee and the Executive Board of the Association in accordance with the Master Declaration.

16. **Repair or Removal of Improvements.** Any improvement damaged in whole or in part by fire, windstorm or any other cause must be promptly restored or all debris removed and the Homesite restored to a slightly condition. Such restoration or removal of debris shall be completed within three (3) months from the date of the casualty unless the Architectural Control Committee grants a written extension.

17. **Wetlands.** Homesites 339-352 and 382-383, as shown on the Plat, contain wetlands subject to U.S. Army Corps of Engineers regulatory jurisdiction. Such wetlands are located along or adjacent to the high water line of the Atlantic Intracoastal Waterway below the Top Bank Line as shown on the Plat. No person or entity shall fill, grade, excavate or perform other land disturbing activities in such jurisdictional wetlands. This covenant is intended to ensure continued compliance with the mitigation condition of authorizations issued by the U.S. Army Corps of Engineers, Wilmington District, Action ID No. 200001599, and therefore may be enforced by the United States of America.

18. **Wells.** No well shall be drilled, installed or allowed to remain on any Homesite for drinking water or other household or potable water supply purposes. A well may be installed on a Homesite for irrigation purposes only, subject to approval of the Architectural Control Committee, provided that any above ground pump or other equipment or related structure must be completely concealed and located within the dwelling on such Homesite.

19. **Easements.** Declarant hereby reserves for itself, its successors and assigns: (i) permanent easements for utilities on all Homesites along all property lines, measured ten (10) feet into the Homesite from each property line; (ii) permanent easements on Homesites 352-356 and 369-382, within the area shown as 30' Marina Maintenance and Structural Elements Easement on the Plat, for a bulkhead wall around the marina basin and along the sides of the channel, together with all necessary or appropriate anchors, tiebacks and other associated or supporting structures and equipment, and for utilities, said 30' easement being measured from the inside (water side) edge of the marina bulkhead; (iii) permanent easements on Homesites 352-353 and 381-382, within the area shown as 20' Access and Maintenance Easement on the Plat, for maintenance of the marina basin, channel and bulkhead; (iv) temporary construction easements on Homesites 352-356 and 369-382 for excavation of the marina basin and channel and construction of the bulkhead and related structures,

equipment and utilities, said temporary easements to expire upon completion of such construction or December 31, 2002, whichever occurs first; and (v) other easements as shown on the Plat or described above. Such easements shall be for the installation, maintenance and replacement of such structures, equipment and utilities across, on and under the ground, or for other purposes as specified on the Plat, together with the right of ingress and egress over and upon the subject property for such purposes. Easements for utilities must be used so as not to unreasonably interfere with the use of the Homesites by the owners of same. Uses of utility easements may include, but shall not be limited to, electric, cable television, telecommunications, water and sewer (which may include wastewater lines or pipes from one or more Homesites to offsite septic system drain fields). All such easements are nonexclusive and shall be assignable, in whole or in part, to the Association, to public utilities and to other providers of utility services. The easements around or adjacent to the marina basin tract are nonexclusive and shall be assignable, in whole or in part, to any owner of such tract, to the Association, or to any marina slip owners association.

**20. Application of Restrictions.** The foregoing covenants, conditions, restrictions and easements shall apply only to the Homesites and not to any other property now or hereafter owned by Declarant, unless such other property is subjected to such covenants, conditions, restrictions and easements pursuant to an instrument executed by Declarant and recorded.

**21. Waiver of and Consent to Violations.** Where approval authority is specifically granted to the Architectural Control Committee herein or in the Master Declaration, the Architectural Control Committee may waive a violation of a covenant, condition or restriction by appropriate instrument in writing. Otherwise, Declarant may waive any violation of the covenants, conditions and restrictions set forth herein, or release any of the easements reserved herein, by appropriate instrument in writing; provided that any waiver of paragraph 6 or 17 shall require approval by an appropriate official or authority of the State of North Carolina, and any waiver of paragraph 17 shall require the express written consent of the U.S. Army Corps of Engineers, Wilmington District.

**22. Term.** The covenants, conditions and restrictions set forth herein shall run with the land and shall be binding on all owners of such property and all persons claiming under them for a period of thirty (30) years from the date that this instrument is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years unless the owners of two-thirds (2/3) the Homesites shown on the Plat have executed an instrument agreeing to terminate said covenants, conditions and restrictions in whole or in part and such instrument is recorded. The easements reserved herein shall run with the land and shall be binding on all owners of such property and all persons claiming under them, except to the extent that an easement has been released by Declarant or an assignee thereof pursuant to a recorded release. Any termination of paragraph 6 or 17 shall require approval by an appropriate official or authority of the State of North Carolina, and any termination of paragraph 17 shall require the express written consent of the U.S. Army Corps of Engineers, Wilmington District.

**23. Amendment.** The covenants, conditions and restrictions (but not the easements) set forth herein may be amended at any time by the owners of two-thirds (2/3) of the Homesites shown on the Plat by the execution and recording of an amendment hereto; provided that any such amendment prior to December 31, 2020 shall require the written consent of Declarant. Any amendment of paragraph 6 or 17 shall require approval by an appropriate official or authority of the State of North Carolina, and any amendment of paragraph 17 shall require the express written consent of the U.S. Army Corps of Engineers, Wilmington District.

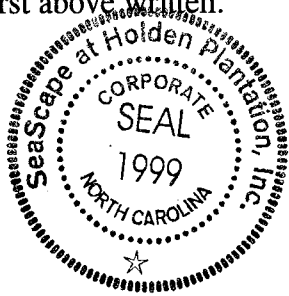
**24. Enforcement.** Except to the extent that a waiver has been duly granted as provided herein, Declarant, the Association, their respective successors and assigns, and any owner of a Homesite shall have the right to enforce, by a proceeding at law or in equity, all of the covenants, conditions and restrictions set forth herein against any person or persons violating or attempting to violate the same, either to restrain the violation or to recover damages. Failure by any such entity or person to enforce any of the covenants, conditions or restrictions set forth herein shall in no event be deemed a waiver of the right to do so thereafter. The State of North Carolina shall have the right to enforce paragraphs 6 and 17 hereof.

**25. Successors and Assigns.** The rights of Declarant hereunder shall inure to the benefit of its successors and assigns if so specified in an instrument executed by Declarant and recorded; provided, however, that this requirement of designation in a recorded instrument shall not apply to a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure to any property owned by Declarant and now subject to, or subject to annexation by Declarant under, the Master Declaration.

**26. Severability.** Invalidation of any provision hereof shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

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IN WITNESS WHEREOF, Declarant has caused this instrument to be duly executed as of the day and year first above written.



SeaScape at Holden Plantation, Inc.

By: *Mark A. Saunders*  
Mark A. Saunders, President

NORTH CAROLINA

BRUNSWICK COUNTY

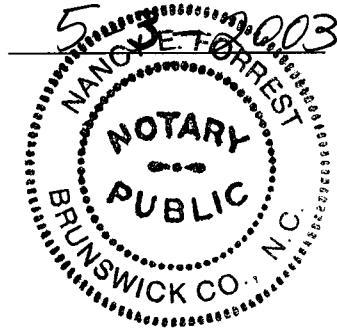
I, *Nancy E Forrest*, a Notary Public of said County and State, certify that MARK A. SAUNDERS personally came before me this day and acknowledged that he is President of SeaScape at Holden Plantation, Inc., a corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this 28<sup>th</sup> day of February 2001.

(Notary Seal)

*Nancy E Forrest*  
Notary Public

My Commission Expires:



Branch Banking and Trust Company, as holder of promissory notes secured by deeds of trust on the property described in this Declaration of Protective Covenants and Easements, said deeds of trust being recorded in Book 1293, Page 373 and Book 1340, Page 179, Brunswick County Registry, and the undersigned substitute trustee under said deeds of trust, join in the execution hereof for the purpose of subordinating and subjecting said deeds of trust to this Declaration.

BRANCH BANKING AND TRUST COMPANY

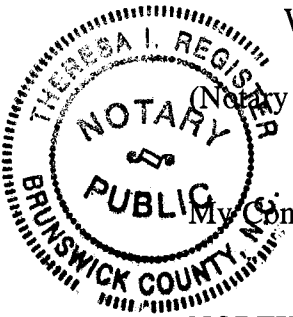
By: [Signature]  
~~Assistant~~ Vice President

[Signature]  
Substitute Trustee

NORTH CAROLINA - BRUNSWICK COUNTY

I, Theresa I. Register, a Notary Public of said County and State, certify that Robert F. Cox, Jr. personally came before me this day and acknowledged that he/she is an ~~Assistant~~ Vice President of BRANCH BANKING AND TRUST COMPANY, a corporation, and that he/she as ~~Assistant~~ Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this 28<sup>th</sup> day of February, 2001.

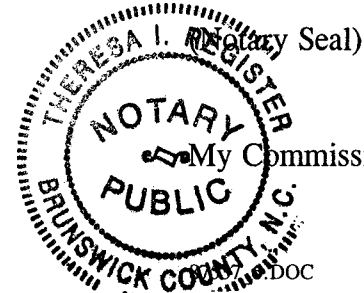


[Signature]  
Notary Public

NORTH CAROLINA - BRUNSWICK COUNTY

I, Theresa I. Register, a Notary Public of said County and State, certify that Robert F. Cox, Jr., Substitute Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal, this 28<sup>th</sup> day of February, 2001.



[Signature]  
Notary Public

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

The Foregoing (or annexed) Certificate(s) of NANCY E FORREST, THERESA I REGISTER

Notary(ies) Public is (are) Certified to be Correct.  
This Instrument was filed for Registration on this 1st Day of March, 2001  
in the Book and Page shown on the First Page hereof.

[Signature]  
ROBERT J. ROBINSON, Register of Deeds