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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

BOOK PAGE

FILED TO & VERIFIED
REGISTER OF DEEDS
NEW HANOVER CO. NC

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DECLARATION OF RESTRICTIONS, CONDITIONS, EASEMENTS,
COVENANTS, AGREEMENTS, LIENS AND CHARGES
(OR RESTRICTIVE COVENANTS) 18

COLTON PARK

THIS DECLARATION made this the 3rd day of September,
1992, by THE COLTON PARK COMPANY, a North Carolina partnership,
with its principal place of business at 1422 Commonwealth Drive,
Wilmington, North Carolina 28409, hereinafter called "Declar-
ant";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain real proper-
ty located in New Hanover County, North Carolina, as set forth on
that certain survey map or plat entitled:

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"COLTON PARK - NEW HANOVER COUNTY, NORTH
CAROLINA," hereinafter sometimes referred to
as "map", which map or plat is recorded in
Map Book 32 at Page 281 in the Office of
the Register of Deeds of New Hanover County,
North Carolina, said property being more
particularly described on said map or plat.

WHEREAS, it is the desire and intention of Declarant to sell
the above described real property and to impose upon it mutually,
beneficial restrictions, conditions, easements, covenants,
agreements, liens and charges under a general plan or scheme of
improvements for the benefit of all said lands and the future
owners of said lands;

NOW, THEREFORE, Declarant hereby declares that all of the
property described above with the exception of lot number seven
(7) which is specifically excluded from the provisions hereof is
held and shall be held, conveyed, hypothecated or encumbered,
leased, rented, used, occupied, and improved subject to the
following provisions, restrictions, conditions, easements,
covenants, agreements, liens and charges, all of which are
declared and agreed to be in furtherance of a plan for the
subdivision, improvement and sale of the said real property and
are established and agreed upon for the purpose of enhancing and
protecting the value, desirability, and attractiveness of said
real property and every part thereof, and all of which shall run
with the land and shall be binding on all parties having or

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acquiring any right, title or interest in the described lands or any part thereof.

1. DEFINITIONS: As used in this Declaration of Restrictive Covenants, the following terms shall mean:

(a) "Declarant" (sometimes referred to as the "Declarant" as used herein shall mean COLTON PARK COMPANY, a North Carolina partnership, its successors and assigns.

(b) "Record" or "Recording" refers to record or recording with the Register of Deeds of New Hanover County, North Carolina.

(c) "Property" generally means the land known as COLTON PARK, New Hanover County, North Carolina as described on page one (1) of this Declaration.

(d) "Residential Lots" or "Lots" means those portions of the property specifically allocated, platted and/or recorded as lots for sale and/or use as a single family residence.

(e) "Association" shall mean the COLTON PARK ASSOCIATION, its successors and assigns.

(f) "Restrictions" shall mean the restrictions and covenants set forth in this Declaration of Restrictive Covenants.

2. APPLICABILITY. These Restrictions shall apply to all lots shown on the above referred to map of COLTON PARK, with the exception of lot number seven (7).

3. (a) RESERVATIONS. The Declarant reserves the right to change, alter or redesignate roads, utility and drainage facilities, and to change, alter or redesignate such other present and proposed amenities or facilities as may, in the sole judgment of the Declarant, be necessary or desirable.

(b) VARIANCES. The Declarant and/or the Architectural Committee appointed by the Declarant shall have the power to and may allow adjustments of the conditions and restrictions herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the regulations contained herein, provided, however, that such is done in conformity with the intent and purposes hereof, and provided, also, that in every

instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the neighborhood. Variances and adjustment of height, size and setback requirements may be granted hereunder.

(c) BUILDING AND SITE IMPROVEMENTS. No building, fence, wall, bulkheading or other structure shall be erected, placed or altered on any residential lot, nor shall the rate or elevation or physical characteristics including, but not limited to, slopes, ridges, and tree growth, of any such lot, or portion thereof, be altered in any way whatsoever, until the proposed building plans, specifications, exterior colors and finishes, including brick siding, etc., site and landscaping plans (showing the proposed location of such building or structure, drives, parking areas and proposed alterations to the grade, elevation or physical characteristics of the site), and construction schedule shall have been approved in writing by the Declarant. Refusal of approval of any such plans, location or specifications may be based by the Declarant upon any grounds including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant shall seem sufficient.

Without the prior written consent of the Declarant, 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 Declarant. One (1) copy of all plans and related data shall be furnished the Declarant for its records. The Declarant 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.

4. APPROVAL OF PLANS. (a) No house plans will be approved unless the proposed house will have the minimum required square footage of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum size requirements shall mean the

total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas. The minimum enclosed dwelling area shall be 2,000 square feet.

(b) COLTON PARK BUILDING SETBACK GUIDELINE REQUIREMENTS are as follows: the front building setback line shall be as shown on the recorded plat. The side building setback line shall be a minimum of ten (10) feet from each side of each lot. In the event of any conflict between these guideline requirements and any less stringent requirement later imposed by any governmental authority, Declarant's guideline shall govern.

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, preservation of land contour, important trees and other vegetation, ecological and related considerations, variances, from these specific setback guidelines are permitted under these Restrictions in accordance with Paragraph 3 (b) hereinabove. In order to assure, however, that the foregoing considerations are given maximum effect, the Declarant reserves the right to control and approve absolutely the site and location of any house or dwelling or other structure upon any lot.

(c) The exterior of all houses and other structures must be completed within nine (9) months after the construction of same shall be commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergency of natural calamities.

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

(e) Each lot owner shall provide space for parking three (3) automobiles off the street prior to the occupancy of any

dwelling constructed on said lot in accordance with reasonable standards established by the Declarant.

(f) No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any residential lot other than a detached single family dwelling not to exceed two and one-half (2-1/2) stories in height, unless the Declarant approves in writing a structure of more than two and one-half (2-1/2) stories pursuant to Paragraphs 3(b) and 4(a) hereof, and a small accessory building (which may include a pool house, servants' quarters, or guest facilities) or detached garage provided the use of such dwelling or accessory building does not in the opinion of the Declarant overcrowd the site, and provided further, that such buildings are not used for an activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building. No garage will be open from the front of a residence unless such a design is approved in writing by the Declarant. No building or other structure, or part thereof, at any time situate on such residential lots shall be used as a professional office or charitable or religious institution, or for business or manufacturing purposes, or for any use whatsoever other than as a private residence. No apartment house or duplex shall be erected or placed on or allowed to occupy any residential lot and no residence shall be altered or converted into a duplex residence or apartment house thereon.

5. RESIDENTIAL USE: (a) All of the above described lots shall be used for residential purposes exclusively.

(b) No trailer, tent, mobile home, or other structure of a temporary character shall be placed upon any lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of the main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as

residences or permitted to remain on the lot after completion of construction.

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

6. MAINTENANCE. (a) It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt 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, nor 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 the Property by the owners thereof.

7. ASSESSMENTS. (a) The owner of each residential lot shall, by the acceptance of a deed or other conveyance for such lot, be deemed obligated to pay to COLTON PARK ASSOCIATION an annual assessment or charge to be fixed, established and collected on a lot by lot basis as hereinafter provided. Said annual assessment or charge shall be due on January 1 of the year for which it is assessed, provided that the Association may make provision for payment thereof in installments. Each annual assessment or charge (or installment thereof) shall, when due, become a lien against the lot against which such assessment or charge is made. Upon demand, the Association shall furnish to any owner or mortgagee a certificate showing the assessments or

charges, or installments thereof, due as of any given date. Each lot subject to these restrictions is hereby made subject to a continuing lien to secure the payment of each assessment or charge (or installment thereof) when due.

(b) Such assessment or charge shall be in an amount to be fixed from year to year by the Association, which may establish different rates from year to year as it may deem necessary. Except as provided below each Lot will be assessed on an equal (pro-rata) basis. Any expense associated with the maintenance or repair on a particular lot shall be assessed specifically against that Lot. Any maintenance or repair to more than one but not all of the lots shall be assessed on a pro rata basis against the lots on which the maintenance or repair was accomplished. The Association may levy additional assessments if necessary to meet any emergency conditions arising out of the prosecution of the purposes outlined in 7(c) below.

(c) The funds arising from said assessment or charge or additional assessment may be used for any or all of the following purposes: Maintenance, operation, improvement and protection of the property; collecting and disposing of garbage, ashes, rubbish and the like; maintenance and improvement of the streets, roads, drives, rights-of-way, community land and facilities, gazebos, green areas; employing watchmen; enforcing these restrictions; paying taxes; insurance premiums, legal and accounting fees, governmental charges; 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 COLTON PARK.

(d) Upon the failure of the owner of any lot to pay any such assessment or charge, additional assessment, or installment thereof when due, the Association or its agent 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 continue in the Association and its agent and the lien of such charge 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 assessment or charges, additional assessments, or installments thereof, shall bear interest at twelve percent (12%) from the due date thereof, until paid.

(e) 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 manner and to the extent as the Association may determine, in accordance with Paragraph 7(c) hereof, for the benefit of the residents of COLTON PARK. The judgment of the Association in the making of assessments or charges or additional assessments and the expenditures of funds shall be final.

(f) 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.

(g) The Association shall have authority, in its discretion, to borrow money to expend for the purposes set forth in Paragraph 7(c) hereof upon such terms and security and for such periods as it may determine, and to repay such borrowings and the interest thereon from the assessments or charges or additional assessments provided for in this Paragraph 7.

8.1. Lien.

a. The association has a lien on a Lot for an assessment levied against the Lot which remains unpaid for a period of thirty (30) days or longer from the time it is filed of record in the Office of the Clerk of Superior Court of New Hanover County, North Carolina. Fees, charges, late charges, fines and interest charged pursuant to this Declaration are enforceable as assess-

BOOK PAGE
1618 0881

ments under this Section. If an assessment is payable in installments, the full amount of the assessment becomes immediately due and payable when the first installment thereof remains unpaid in such manner, and the full amount of the assessment shall constitute a lien from the time of such filing.

b. A lien under this section is prior to all other liens and encumbrances on a Lot except;

(i) liens and encumbrances (including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the lien in the Office of the Clerk of Superior Court; and

(ii) liens for real estate taxes and other governmental assessments or charges against the Lot. This Subsection does not affect the priority of mechanics' or materialmen's liens.

c. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing thereof in the Office of the Clerk of Superior Court.

d. A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

e. The Association's lien may be foreclosed as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina.

f. If a holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot, obtains title to the Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Lot which became due prior to acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Lot Owners including such purchaser, and its heirs, successors and assigns.

g. Any payments received by the Association in the discharge of a Lot Owner's obligation may be applied to the oldest balance due.

8.2. Budget Adoption and Ratification. Within thirty (30) days after adoption of a proposed budget for the property, the Board of Directors shall provide a summary of the Budget to each

Lot Owner, and shall set a date for a meeting of the Lot Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting eighty percent (80%) of all Lot Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Lot Owners continues until the Lot Owners ratify a budget proposed by the Executive Board.

8.3. Ratification of Non-Budgeted Common Expense Assessments. If the Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 7(b) of this Declaration, in an amount greater than fifteen (15) percent of the current annual operating budget, the Board shall submit such Common Expense to the Lot Owners for ratification in the same manner as a proposed budget.

8.4. Certificate of Payment of Common Expense Assessments. The Association upon written request shall furnish to a Lot Owner a statement setting out the amount of unpaid assessments against the Lot. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board and each Lot Owner.

8.5. Monthly Payment of Common Expenses. All Common Expenses shall be due and payable quarterly in advance.

8.6. Acceleration of Common Expenses Assessments. In the event of default for a period of thirty (30) days by any Lot Owner in the payment of any Common Expense assessment levied against his or her Lot, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

8.7. No Waiver of Liability for Common Expenses. No Lot Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use of enjoyment of the Common Elements or by abandonment of the Lot against which the assessments are made.

9. DECLARANT CONTROL PERIOD. During the Declarant Control Period the Declarant, or persons designated by Declarant, subject to certain limitations contained in the Declaration, may appoint

and remove the officers and Directors of the Association. The Declarant Control Period shall extend until December 31, 1995, unless the Declarant should divest itself of all lots in the property prior to that time in which event the Declarant Control Period shall expire at that time.

Except as otherwise provided above, not later than the termination of the Declarant Control Period, the Lot Owners shall select a board of directors consisting of at least three (3) members, a majority of whom shall be Lot Owners. The Board of Directors shall elect the officers. The Board of Directors and officers shall take office upon election.

10. ENTRY. The Declarant reserves for itself, its successors and assigns, and its agents the right to enter upon any residential lot, such entry to be made by personnel with tractors or other suitable devices, for the purposes of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, or for the purpose of building or repairing any land contour or other earthwork, which in the opinion of the Declarant 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 Declarant 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 provisions in this Paragraph shall not be construed as an obligation on the part of the Declarant to undertake any of the foregoing.

11. MISCELLANEOUS EASEMENTS. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground with men and equipment to erect, maintain, inspect, repair and use wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity and telephone equipment, gas, sewer, water or other public conveniences of utilities on, in or over the front ten (10) feet, the rear ten (10) feet of each lot and ten (10) feet along one side of each lot and such other easements as may be reserved on the recorded plat; provided, further, that the Declarant may cut drainways for

surface water whenever action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

12. SUBDIVIDING. No lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant. However, the Declarant hereby expressly reserves to itself, its successors and assigns, the right to replat any two (2) or more lots shown on the map 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 to be limited to, the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted lots.

13. MEMBERSHIP IN ASSOCIATION. By the recording of the deed to his or her lot, the lot purchaser becomes and agrees to continue to be a member of the Association and agrees to abide by, and be subject to, the charter and by-laws of the Association and these Restrictions.

14. COVENANTS RUN WITH THE LAND. All covenants, restrictions and affirmative obligations set forth in these Restrictions shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of the Declarant, for a period of twenty (20) years from the date hereof after which time all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of lots substantially affected by such changes in covenants, has been recorded, agreeing to change said covenants in whole or in part.

15. VIOLATIONS. In the event of a violation or breach of any of these Restrictions by any lot owner, or agent of such owner, the Declarant or owners of any other property in COLTON PARK or any of them jointly or severally shall have the right to proceed at law or equity to compel a compliance with the terms

hereof or to prevent a violation or breach. In addition to the foregoing, the Declarant shall have the right, whenever there shall have been built on any lot any structure which is in violation of these restrictions to enter upon the lot on which said violation exists and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement for removal shall not be deemed a trespass. The failure to enforce any right, reservations, restrictions, or condition 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 to or subsequent thereto and shall not bar or affect its enforcement.

16. DEDICATION TO PUBLIC USE. Nothing in these Restrictions, nor in the recording of any plat or deed pursuant hereto, shall dedicate (or be deemed to dedicate) to public use any of the streets, common lands or other grounds within COLTON PARK.

17. EASEMENT OF ACCESS AND OPEN SPACE. (a) Each and every lot owner is hereby granted an easement to pass over, use and enjoy open spaces now or subsequently designated on recorded plats as community open space, and all roads, provided, however, that the Declarant, its successors and assigns, shall, in its sole discretion, retain the right to establish rules and regulations for the use and enjoyment of all such property.

(b) The Declarant reserves the right to erect and maintain utilities, drainways and other public conveniences in common lands, including the right to cut any trees, bushes or shrubbery, make any gradings of the soil, build buildings or take any similar action reasonably necessary or desirable to provide economical and safe installation and service, to establish reasonable fees, and to maintain reasonable standards of health, safety and appearance.

18. No mail box or paper box or other receptacle of any kind for the use in the delivery of mail or newspaper or magazines or similar material shall be erected or located on any building lot unless and until the size, location, design and type

BOOK PAGE

1618 0886

of material for said box or receptacle shall have been approved by the Declarant.

19. Exterior radio and television aerials or Satellite dishes for reception of commercial broadcasts shall not be permitted in COLTON PARK; and no other aerials (for example, without limitation, amateur short wave or ship to shore) shall be permitted in COLTON PARK without permission of the Declarant as to design, appearance and location.

20. During construction all vehicles involved, including those delivering supplies, must enter the building lot on the driveway only as approved by the Declarant so as not to damage unnecessarily trees, street paving and curbs. During construction builder must keep the homes, garages, and building sites clean. All building debris, stumps, trees, etc., must be removed from each building lot by builder as often as necessary to keep the house and lot attractive. Such debris will not be dumped in any area of the Subdivision.

21. No property owner will do or permit to be done any act upon his property which may be or is or may become a nuisance to any other property owner or resident. There shall no discharging of firearms, guns or pistols, of any kind, caliber, type, or method of propulsion, and no hunting of any type shall be carried on or conducted on said land.

22. Clothesline or drying yards shall be located as not to be visible from the street or common are.

23. No trailers or habitable motor vehicles of any nature, boats or canoes on or off trailers, may be parked on any part of the property unless inside an enclosed garage. These prohibitions also apply to the common easement area.

24. Signs. No sign shall be permitted on any lot in COLTON PARK except under the following conditions. One routed wood "For Sale" sign not to exceed 2 feet by 2 feet shall be allowed on an improved lot. One routed wood sign not to exceed 6 inches by 1 foot containing phone number only shall be allowed on any unimproved lot.

25. Each and every covenant and restriction contained herein shall be considered to be an independent and separate

covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

26. The Declarant may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not lower the standards of the covenants and restrictions set forth herein.

27. If the Declarant shall transfer or assign the development of such Subdivision or if it shall be succeeded by another in the development of such Subdivision, then such transferee, assignee, or successor shall be vested with the several rights, powers, privileges, or authorities given said Declarant by any part or paragraph hereof. The foregoing provisions of this Paragraph shall be automatic, but the Declarant may execute such instrument as it shall desire to evidence the vesting of the several rights, powers, privileges, and authorities in such transferee, assignee, or successor.

28. The owner, from time to time, of each lot, prior to commencement of the erection of any residence on such lot, shall cut, or cause to be cut, and keep cut or cause to be kept cut, all weeds and brush on such lot and shall remove any resulting debris, to comply with Paragraph 6 hereof. Should such owner fail to do so, the Declarant may do so, and the reasonable expenses thereof shall be paid by such owner to the Declarant within thirty (30) days thereafter. In the event of a failure of such owner to pay the Declarant as above provided, the Declarant shall have the right to file a notice of lien in the Office of the Clerk of the Superior Court of New Hanover County, North Carolina, and from and after the filing of such notice of lien, the Declarant shall have a lien on such lot for the payment of such sum, all as is provided in Paragraph 8 above.

29. The covenants and restrictions herein shall be deemed to be covenants running with the land. If any person claiming under the Declarant shall violate or attempt to violate any of such restrictions or covenants, it shall be lawful for the Declarant, or any person or persons owning any residential lot on