

BOOK

PAGE

1440 1071

RECORDED AND VERIFIED  
REBECCA P. TUCKER  
REGISTER OF DEEDS  
NEW HANOVER CO, NC

RETURNED TO

DEC 21 2 41 PM '88

Prepared by and return to: Thomas C. Worth, Jr.  
5832 Faringdon Place, Raleigh, NC 27609  
990-9279

STATE OF NORTH CAROLINA :  
COUNTY OF NEW HANOVER :

DECLARATION OF RESTRICTIONS, CONDITIONS, EASEMENTS,  
COVENANTS, AGREEMENTS, LIENS AND CHARGES  
FOR  
LANDFALL CENTER, SECTION III

51

This Declaration made this 21<sup>st</sup> day of December, 1988, by  
LANDFALL ASSOCIATES, a North Carolina General Partnership, with a  
principal office located at 1620 Dye Place, Wilmington, New Hanover  
County, North Carolina 28403, hereinafter called "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain real property  
located in New Hanover County, North Carolina, commonly referred to as  
"Landfall Center, Section III," which is more particularly described on  
Exhibit A attached hereto and hereinafter sometimes referred to as the  
"Property";

WHEREAS, Declarant intends to sell and convey portions of, or  
parcels within, the Property to various persons, firms and corporations  
to be developed and improved for commercial purposes in Landfall  
Center, Section III; and

NOW, THEREFORE, Declarant hereby declares that all of the Property  
described above is held and shall be held, conveyed or encumbered,  
leased, rented, used, occupied, and improved subject to the following  
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 acquiring any right, title or interest in the described lands or any part thereof. These conditions shall become a part of each instrument conveying any interest in any portion of the Property, as fully and to the same extent as if set forth therein. As a condition of the sale, lease or other transfer of any portion of the Property, all purchasers, transferees, lessees and other occupants and users thereof agree and covenant to abide by and conform with said covenants, conditions, easements and restrictions.

THE RESTRICTIONS, CONDITIONS, EASEMENTS, COVENANTS, AGREEMENTS, LIENS AND CHARGES ARE AS FOLLOWS:

#### ARTICLE I

##### DEFINITIONS

As used in this Declaration the following terms shall mean:

Section 1. "Declarant" as used herein shall be Landfall Associates, a North Carolina General Partnership and its successors and assigns.

Section 2. "Architectural Committee" (hereinafter sometimes referred to as the "Committee") may be appointed by Declarant to perform some or all of the duties arising under this Declaration (including without limitation overseeing compliance with and relief

from the requirements set forth herein) and shall succeed Declarant in the performance of all such duties as hereinafter provided.

Declarant, its appointed Architectural Committee and/or its designated agents shall perform the duties arising under this Declaration for a period of not less than five (5) years from the date of its recording. Thereafter upon thirty (30) days written notice to the then owners of the lots upon the Property, Declarant, its Architectural Committee (if appointed by Declarant) and its agents shall relinquish the responsibility for performing the aforesaid duties to an Architectural Committee to be appointed by the then owners of the lots upon the Property. Each lot owner shall appoint one committee member and the Committee decisions made in performance of the duties hereunder shall be by majority vote of the members.

Section 3. "Record" or "Recording" refers to record or recording with the Register of Deeds for New Hanover County, North Carolina.

Section 4. "Property" refers to the real property known as Landfall Center, Section III, New Hanover County, North Carolina, as specifically described on Exhibit A hereto attached, and such additions thereto as may hereafter be brought under and subjected to this Declaration by Declarant.

Section 5. "Restrictions" shall mean the restrictions, conditions, easements, covenants, agreements, liens and charges set forth in this Declaration.

## ARTICLE II

RESERVATIONS

Section 1. The Declarant reserves the right to change, alter or redesignate roads, utility and drainage facilities, buffers and easements, 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 for the effective functioning and operation of the Property.

Section 2. The Declarant and/or the Architectural Committee reserves the right to vary and allow adjustments of the Restrictions herein in order to overcome practical difficulties and prevent unnecessary hardships in the application of said Restrictions; provided, however, that such adjustments are accomplished 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 substantially injurious to other parcels or improvements within the Property. Variances and adjustments hereunder shall include without limitation variances and adjustments of structure height, setback requirements and structure and lot size.

Section 3. Declarant reserves the right to resubdivide the lots described on Exhibit A attached hereto; provided, however, that no lot within the Property shall contain less than 30,000 square feet.

Section 4. Declarant reserves the right to add additional contiguous real property to the Property and to subject such additional real property to the Restrictions of this Declaration, provided,

however, that the contiguous area containing 381,151 square feet shown upon that map or plat recorded in Map Book 28, page 71, New Hanover County Registry, may be used only for commercial office uses, (unless an alternative use(s) is first approved in writing by all of the then owner(s) and mortgagee(s) of Lots 1, 2 and 3 as shown upon the above referenced map) and provided further that if Declarant elects to develop this contiguous area, a buffer of trees at least ten (10) feet in width shall be maintained between development within this area and primary buildings constructed or to be constructed upon Lots 1, 2 and 3 as shown upon the above referenced map.

### ARTICLE III

#### USES

Prior to the initial use or occupancy of each lot or parcel within the Property by any owner other than Declarant, such party shall submit to Declarant, for Declarant's review and approval, a written statement setting forth the uses to which such parcel shall be devoted by such owner. Declarant may approve or reject such proposed uses of such parcel, in whole or in part, in its sole discretion. Upon such approval being obtained, the parcel covered by such approval shall thereafter be devoted to the approved uses by all owners, occupants and users thereof, but subject to:

- (a) Any limitations or conditions contained in such approval,
- (b) All applicable laws, ordinances and requirements of all governmental and regulatory authorities having jurisdiction over the Property, and

(c) The terms and conditions of this Declaration, including without limitation, the following specific requirements:

(i) Not more than one (1) of the seven (7) lots described on Exhibit A shall be used for a "fast food" restaurant (with or without drive-through capability) including without limitation Hardee's, McDonald's, Taco Bell, Burger King, Wendy's and Rax. This restriction shall not prohibit the location of a traditional "sit-down" type restaurant (without drive-through capability) including without limitation T. K. Tripps, Bennigans, Applebees and Fat Daddy's upon not more than one (1) other lot of the seven (7) lots described on Exhibit A.

(ii) Not more than one (1) of the seven (7) lots described on Exhibit A shall be used in connection with the operation of a "convenience" store (with or without gasoline sales capability) including without limitation Fast Fare, Scotchman, 7-11 and The Pantry.

No part of such parcel shall thereafter be devoted to any use or uses not contained in Declarant's approval unless and until the party seeking such proposed new use or uses shall submit to Declarant (or the Architectural Committee) a written request therefore and Declarant or the Committee shall approve such new use or uses in writing, which approval Declarant agrees shall not be unreasonably withheld or delayed.

All requests submitted under this Article by any party other than the then record owner of the parcel to which the request pertains shall be accompanied by a written consent to such request from such record owner.

#### ARTICLE IV

##### ARCHITECTURAL CONTROL

No site preparation (including, but not limited to grading, elevation work, landscaping, sloping or tree work) or initial construction, erection or installation of any improvements, including but not limited to, buildings, fences, signs, walls, bulkheads, screens, landscaping, plantings, yard furniture or other equipment, furniture or structures shall be commenced, erected, placed, altered or maintained upon the Property or any lot, nor shall any addition to, or change, or alteration therein be made by any owner, other than Declarant, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, siding, location and elevations of the proposed improvements or landscaping or yard equipment or furniture 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 Declarant, by an Architectural Committee appointed by the Declarant or by an Architectural Committee appointed by the then owners as provided in Article I, Section 2. In the event said Declarant, or the Committee fails to approve or disapprove such submissions within thirty (30) days after said 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; provided that plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding the foregoing.

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

Upon request the Declarant or Committee shall provide any owner with a letter stating that any such work plans and specifications have been approved and the same may be relied upon by third parties.

Refusal of approval of such plans, location or specifications may be based upon any grounds, including purely aesthetic and environmental consideration, that in the sole discretion of the Declarant or Committee, it shall deem sufficient. The Declarant or Committee shall not be responsible for any defects in the plans and specifications submitted to it or in any structure erected according to such plans and specifications.

The Declarant, the Committee or their appointed agents, shall have the right, at their election, but shall not be required, to enter upon any of the Property during site preparation or construction, erection or installation of improvements to inspect the work being undertaken

and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

#### ARTICLE V

##### GENERAL COVENANTS AND CONDITIONS

Section 1. The exterior of all improvements and structures must be completed within twelve (12) months after the construction of same shall be commenced, except where such completion is impossible or would result in great hardship to the owner due to circumstances beyond owner's control, such as strikes, fires, national emergencies and natural calamities. Failing completion as above set forth, the Declarant shall have the option of repurchasing the subject lot at its original sales price plus reasonable value of improvements in place, subject to any first mortgage.

Section 2. Each owner shall provide receptacles for trash and refuse in a screened area not generally visible from the adjacent street(s), or provide underground receptacle facilities in accordance with reasonable standards established by the Declarant or the Committee.

Section 3. No improvement or structure shall be erected on any lot within the Property which exceeds three (3) stories in height.

Section 4. Every owner of a lot within the Property shall at all times keep the same and all improvements and structures thereon in a safe, clean and orderly condition, in compliance with all government, health, fire and police requirements and regulations; and will promptly remove, at such owner's expense, any rubbish, weeds, dead trees and

debris of any character whatsoever which may accumulate on such lot. In the event any such party fails to comply with the provisions of this Section 4, and such failure shall not be corrected within five (5) days after written notice thereof to such owner from Declarant or Committee (except if the violation cannot be corrected within said five (5) day period, then the party shall have such additional time as is reasonably necessary to effect compliance, provided the party shall commence correction of such condition within said five (5) day period and thereafter diligently proceed to complete the correction of said condition), then the Declarant or Committee or its agents, shall have the right, privilege, and license, but not the obligation, to enter upon such lot and make any and all corrections or improvements that may be necessary to meet the requirements of this Section 4 and any such entry shall not be deemed a trespass. Declarant or Committee shall have the right to charge such owner for all expenses incurred thereby and to collect such expenses by appropriate legal action against such party, including without limitation the right to file under North Carolina laws notices of liens and to thereafter perfect same for recovery of all costs incurred, such as, but not limited to interest and attorney fees, as applicable.

Section 5. If the finished building or other structure does not comply with the submitted plans and specifications (subject only to minor deviations therefrom), the Declarant or Committee retains the right after notice as provided in Section 4 hereof to both the owner and its mortgagee(s) to make the necessary changes at owner's expense, and the further right to file under the North Carolina laws notice of

liens and to thereafter perfect same for recovery of all costs incurred, including without limitation, interest and attorney's fees to the extent applicable. Such entry shall not be deemed a trespass.

Section 6. No owner other than the Declarant may subdivide his lot or alter its boundary lines except with the prior written consent of the Declarant or Committee.

Section 7. All electrical, gas, water, sewage, telephone, cable and other utility and service lines, pipes, runs, and connections within the Property shall be installed and maintained exclusively underground, except that meters for measuring utility consumption and utility service boxes may be located above ground. Each owner shall install a professionally designed underground sprinkler system for all landscape vegetation upon its respective lot.

Section 8. No sign or signage of any type shall be constructed or maintained on any lot within the Property except for wall signs affixed to the primary structure on each lot and free standing monument and directional signs placed upon the lot to assist the owner's patrons and customers. All signs must be approved in writing by Declarant or the Committee as to number, size, color, copy and location and must conform to any sign criteria established by applicable governmental ordinances and regulations, as amended.

Section 9. No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be erected or maintained on any portion of the Property at any time, except for building contractor's construction trailers, which shall be permitted only during periods of actual construction on the lot where such trailer is located.

Section 10. No mail box or paper box or other receptacle of any kind for use in the delivery of mail or newspapers or magazines or similar material shall be erected or located on any lot upon the Property.

Section 11. Exterior radio, television and telecommunication antennas, aerials, disks or similar devices shall not be permitted upon the Property without the written permission of the Declarant or Committee as to size, design, appearance and location.

Section 12. No obnoxious, improper or offensive activity shall be carried on upon any lot, nor shall anything be done which may be, or may become, a nuisance or annoyance to the other owners within the Property.

Section 13. All laws, orders, rules, regulations, ordinances or requirements of any governmental agency having jurisdiction thereof, relating to any lot shall be complied with, by and at the sole expense of the owner.

Section 14. No person shall undertake, cause or allow any alteration or construction in or upon any lot or structure thereon without the express written consent of the Declarant or Committee.

#### ARTICLE VI

##### AMENDMENTS

Section 1. These Restrictions may be amended or revoked in whole or in part by a written instrument in recordable form duly executed by Declarant and recorded in the New Hanover County Registry.

Section 2. All restrictions, conditions, easements, covenants, agreements, liens and charges set forth in this Declaration shall run

1440 1083

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 ten (10) years from the date hereof after which time all said Restrictions shall be automatically extended for successive periods of ten years, unless an instrument signed by a majority of the then owners of lots substantially affected by such changes in Restrictions, has been recorded, agreeing to change said Restrictions in whole or in part.

#### ARTICLE VII

##### ENFORCEMENT

The terms and conditions of this Declaration shall be enforceable by Declarant, the Committee or any lot owner, as applicable, as follows:

(i) Declarant or the Committee securing correction of a violation of the terms of this Declaration and obtaining reimbursement for costs and expenses incurred thereby, as provided in Article V hereof; or

(ii) Declarant, the Committee or a lot owner instituting a proceeding at law to recover damages for violation of the terms hereof; or

(iii) Declarant, the Committee or a lot owner instituting a proceeding in equity to restrain a violation or attempted violation of the Restrictions herein contained.

As to Declarant and the Committee, the above remedies for enforcement of the Restrictions herein contained are cumulative and non-exclusive, may be exercised singly or concurrently, and shall be in

addition to any other right, power or remedy of the Declarant or the Committee now or hereafter existing, at law, in equity or by statute.

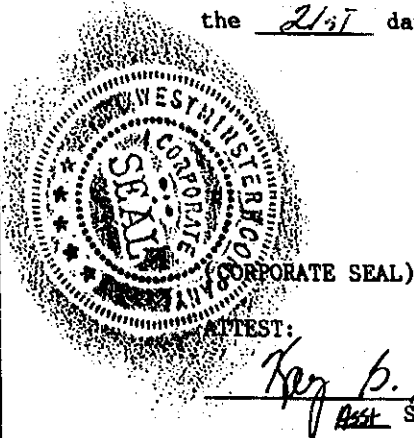
ARTICLE VIII

SEVERABILITY AND NON-WAIVER

Invalidation of any one of these Restrictions by judgment or order of any court shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

The failure of Declarant or the Committee to enforce any Restriction hereof at the time of its violation, shall in no event affect any of the other restrictions, conditions, easements, covenants, agreements, liens and charges nor be deemed a waiver of the right subsequently to enforce any covenant, condition, easement or restriction hereof.

IN TESTIMONY WHEREOF, Landfall Associates has caused this instrument to be executed in its name, all by authority duly given, this the 21st day of December, 1988.



LANDFALL ASSOCIATES, (SEAL)  
A North Carolina General  
Partnership

By: Westminster Company  
General Partner

By: Joseph E. Thomas  
Joint Vice President

NORTH CAROLINA :

COUNTY OF New Hanover :

I, Thomas C. Worth Jr., a Notary Public, certify that Kay B. Baxton personally appeared before me this day and acknowledged that she is 1988 Secretary of W. S. Johnston Company, a corporation, partner of Landfall Associates, a North Carolina General Partnership, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, attested by her self as its 1988 Secretary, and sealed with its common corporate seal.

Witness my hand and Notarial Stamp/Seal this 21st day of December, 1988.

Thomas C. Worth Jr.  
Notary Public

My Commission expires: 1/21/95

THOMAS C. WORTH, JR., Notary Public  
NEW HANOVER COUNTY, NORTH CAROLINA  
My Commission Expires 1/21/95

STATE OF NORTH CAROLINA  
New Hanover County  
The Foregoing Certificate of  
THOMAS C. WORTH, JR., A  
NOTARY PUBLIC  
is certified to be correct.  
This the 21st day of Dec. 19 88

Rebecca P. Tucker, Register of Deeds  
By Linda P. Alford  
Deputy