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MARY SUE OOTS  
REGISTER OF DEEDS  
NEW HANOVER CO. NC

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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR WESTFALL PARK

000132

This Declaration, Made the 6th day of January, 2000, by **RAIFORD G. TRASK, JR.**, hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated;

WITNESSETH:

Whereas, Declarant is the owner of certain real property in New Hanover County, North Carolina, known as Section 1, **Westfall Park**, which is shown on a plat recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in Map Book 39 Page 238, to which reference is made for a more particular description (the "Property").

NOW, THEREFORE, Declarant declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants, and conditions.

ARTICLE I.

DEFINITIONS

SECTION 1. Additional Property shall mean and refer to any lands which are now owned or may be hereafter acquired or developed by Declarant, in addition to the above described Property, and annexed to and made a part of the Planned Community (as hereinafter defined).

SECTION 2. Allocated Interest shall mean the Common Expense Liability and votes in the Association allocated to each Lot.

SECTION 3. Association shall mean and refer to Westfall Park Owners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

SECTION 4. Common Elements shall mean and refer to all lands and easements within or appurtenant to the Planned Community owned by the Association, other than a Lot, and intended for the common use and enjoyment of the Owners, including, without limitation, any private roads and storm water retention ponds within the Planned Community. Common Elements shall also include any landscaping, sidewalks, lighting, and irrigation located within the boundaries of any public roads.

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217 N. 5th St., Wilmington, NC 28401

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SECTION 5. Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

SECTION 6. Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise by law.

SECTION 7. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to RAIFORD G. TRASK, JR., his heirs, successors and assigns, if such heirs, successors or assigns should acquire undeveloped property from the Declarant or a Lot not previously disposed of for the purpose of development and reserves or succeeds to any Special Declarant Right..

SECTION 8. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 9. Executive Board shall be used interchangeably with the Board of Directors and means the body, regardless of name, designated in this Declaration to act on behalf of the Association.

SECTION 10. Limited Common Elements shall mean areas and facilities within any Lot which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration. The Limited Common Elements shall consist of \_\_\_\_\_ (if none, so state).

SECTION 11. Lot(s) shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner.

SECTION 12. Lot Owner shall mean the Declarant or other Person who owns a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 13. Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.

SECTION 14. Planned Community shall mean and refer to the Property plus any Additional Property made a part of Planned Community.

SECTION 15. Purchaser means any Person, other than a Declarant or a Person in the business of selling real estate for the purchaser's own account, who by means of a

voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

SECTION 16. Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

## ARTICLE II.

### PROPERTY RIGHTS AND EASEMENTS

SECTION 1. Owners' Property Rights and Easement of Enjoyment. Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Elements, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners;

(b) The Association may mortgage or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that the Association may without the consent of the Owners grant easements over the Common Elements for drainage systems and public utilities servicing the Planned Community, that any conveyance or encumbrance of Common Elements shall be subject to any rights of ingress and egress to any Lot over private streets.

(c) The Board of Directors on behalf of the Association, as a Common Expense, may at all times keep the Common Elements and other assets of the Association, if any, insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees.

SECTION 2. Easements in Favor of Declarant and the Association. The following easements are reserved to Declarant and the Association, their successors and assigns:

(a) easements as necessary in the lands constituting the Common Elements and the rear, front and side ten feet of each Lot for the installation and maintenance of utilities and drainage facilities; including the right of Declarant and the Association to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of New Hanover County; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the owner of such Lot. No structures or plantings or other material shall be placed or permitted or remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. These easement areas (whether or not shown on the recorded plats for the Planned Community) and improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

(b) easements over all private streets, if any, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress, to any Additional Property.

(c) an easement of unobstructed access over, on, upon, through and across each Lot and the Limited Common Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the Limited Common Elements required by this Declaration. This easement shall also run in favor of the Association and the Association's agents, employees, successors and assigns.

SECTION 3. Other Easements. The following easements are granted by Declarant to others:

(a) an easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties.

(b) in case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it, shall have the right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners, and such right of entry shall be immediate.

(c) the Association is granted an easement over each Lot for the purposes of providing Lot maintenance when an Owner fails to provide maintenance and upkeep in accordance with this Declaration.

SECTION 4. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property or any Additional Property, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

### ARTICLE III.

#### OWNERS' ASSOCIATION

SECTION 1. Formation of Association. The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration, its Charter and Bylaws.

SECTION 2. Membership. Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

SECTION 3. 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 acre of land or fraction thereof

equal to or exceeding one-half acre within the Owner's Lot. When more than one person holds an interest in any Lot, all such persons shall be Members. The votes for such Lot shall be exercised as they determine, but in no event shall the Owners of the Lot collectively be entitled to cast more than aggregate number of votes with respect to any Lot. Fractional voting with respect to any Lot is prohibited.

*Class B.* The Declarant shall be a Class B Member and shall be entitled to two (2) votes for each vote held by the Class A Members. The Class B Membership shall cease on the happening of any of the following events, whichever occurs earlier:

(a) when the Developer no longer owns any land within the Development, or

(b) upon the voluntary surrender of all Class B Membership by the holder thereof.

The period during which there is Class B Membership is sometimes referred to herein as the "Declarant Control Period".

SECTION 4. Government Permits. All duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies shall be the duties, rights, obligations and privileges the responsibility of the Association.

#### ARTICLE IV.

#### COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Each Lot Owner covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

A. Annual Assessments;

B. Special Assessments for Capital Improvements;

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against

which the Assessments are 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 Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

SECTION 2. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property and Additional Property and for the maintenance, repair and replacement of the Common Elements and any Limited Common Elements. The funds arising from said assessments or charges, may be used for any or all of the following purposes: Operations, maintenance and improvement of the Common Elements, and any Limited Common Elements, including payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; paying dues and assessments to any organization or master association of which the Association is a member; and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Elements and Limited Common Elements in good operating order and repair.

SECTION 3. Annual Assessments. At least 60 days before the beginning of each calendar year, the Executive Board shall establish a proposed operations and maintenance budget for the calendar year. If the amount of the budget does not exceed the prior years budget by over 10 percent, then the budget shall become final without approval of the members. If the budget exceeds the prior year's budget by 10 percent, then within 30 days after adoption of the proposed budget for the Planned Community, the Executive Board shall provide to all of the Lot Owners a summary of the budget and notice of a meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Executive Board. The budget thus established shall be the Annual Budget.

The Annual Assessment for each Lot shall be that percentage of the Annual Budget arrived at by dividing the square footage within the Lot by the total square footage of all Lots within the Development. Notwithstanding the foregoing, the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Executive Board. The Executive Board shall have the authority to require the assessments to be paid in periodic installments. 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.

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 the 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 Elements and any Limited Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the Members of each class who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5. Rate of Assessment. The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed structures for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated.

SECTION 6. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

SECTION 7. Effect Of Nonpayment of Assessments And Remedies Of The Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

SECTION 8. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

(a) The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General

Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to this Declaration are enforceable as Assessments.

(b) The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

(c) The lien for unpaid assessments is extinguished unless proceedings to enforce the tax lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

(d) Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

(e) Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot 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 the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns.

(f) A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

#### ARTICLE V

#### RIGHTS OF DEVELOPER

The Declarant shall have, and there is hereby reserved to the Declarant, the Special Declarant Rights as herein defined and the following rights, powers and privileges which shall be in addition to the Special Declarant Rights and any other rights, powers and privileges reserved to the Declarant herein:

SECTION 1. The Architectural Control Committee. All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any portion of the Property or any Additional Property.

SECTION 2. Plan of Planned Community. The right to change, alter or re-designate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Planned Community including, but not limited to, the right to change, alter or redesignate road, utility and drainage facilities and easements and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract; to eliminate from this Declaration Lots that are not otherwise buildable or are needed for access or are needed for use as public or private roads or access areas, whether serving the Planned Community or other property or are needed for Common Elements or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site or access area or roadway or Common Elements.

The Declarant may at anytime dedicate to the public any private streets or utility facilities within the Development

SECTION 3. Amendment of Declaration by the Declarant. This Declaration may be amended without member approval by the Declarant, or the Board of the Association, as the case may be, as follows:

- A. In any respect, prior to the sale of the first Lot.
- B. To the extent this Declaration applies to Additional Property.
- C. To correct any obvious error or inconsistency in drafting, typing or reproduction.
- D. To qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status.
- E. To include any platting change as permitted herein.
- F. To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property.
- G. To address and accommodate (i) the broad range of uses permitted under the current zoning ordinance applicable to the Property and (ii) the fact that the Developer

is unable to determine at this time the sizes of the various Lots which may be subjected to this Declaration, the Declarant may, at anytime the Declarant owns any land within the Development, amend this Declaration in any fashion Declarant deems appropriate. It is not the intention of this provision to circumvent the general or common scheme of development described herein but to accommodate situations or circumstances which may arise during the course of development and to alleviate practical differences and hardship in the enforcement and operation of this Declaration. In addition to amending this Declaration for such purposes, the Developer shall be entitled to grant variances and adjustments from these protective covenants as they apply to any particular Lot.

SECTION 4. Annexation of Additional Property. Declarant may annex to and make a part of the Planned Community any other real property which Declarant now owns or which Declarant may hereafter acquire or develop (the "Additional Property").

#### ARTICLE VI.

#### USE RESTRICTIONS, ARCHITECTURAL CONTROL AND MAINTENANCE

SECTION 1. Approval of Plans for Building and Site Improvements. No building, wall or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same (including proposed setbacks and the location of outside walkways, drives, trash containers, parking areas, parking area striping, storage areas/tanks, loading/service areas and utilities, plus proposed lighting and signage) 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, or its designee, or, after the sale of all Lots by Declarant, by the Executive Board, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event the Declarant, or its designee, or, if applicable, the Board, or the Architectural Control Committee, fails to approve or disapprove such design and location 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. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant, the Board, or Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Declarant, the Board, or Architectural Control Committee, as the case may be, for its records. Neither the Declarant, the Board, nor the Architectural Control Committee shall

be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

SECTION 2. Minimum Standards for Site Improvements.

A. Exterior Materials. The exterior of all buildings shall be constructed of masonry, stucco and/or glass.

B. Setbacks. The site and location of any house or structure upon any Lot shall be controlled by and must be approved absolutely by the Declarant, the Board, or the Architectural Control Committee, as the case may be; provided, however, each building (including outbuildings) shall be set back 50' from any street right of way (except 30' for Lots of less than 250' in depth) and 15' from any other boundary line. Except at the point of connection to a street right of way, all drives and parking area shall be set back 10' from any street right of way and 5' from any other boundary line.

C. Construction Completion. The exterior of all structures and landscaping must be completed within twenty (24) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, due to strikes, fires, national emergency or natural calamities.

D. Screening. All service utilities, garbage receptacles, exterior storage areas, fuel tanks, and loading docks are to be enclosed within a screen of a type and size approved by the Declarant, the Executive Board or the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the Development, or from any other Lot within the Development.

E. Utilities. All secondary power lines and communication lines on a Lot shall be placed underground.

F. Stormwater Regulations. Each Owner shall comply with all stormwater runoff and other governmental regulations applicable to the Owner's Lot. As required by NC State Stormwater Manager Permit SW8 990306 (the "Permit"), the built-upon area of each Lot (including the portion of the street right of way between the front of the Lot and the edge of the pavement) is limited and restricted to 85% of the Lot area. Built-upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, slate and coquina, but does not include raised, open wood decking, or the water surface of swimming pools. All runoff from the built-upon area on each Lot shall be directed into the forebay of the appropriate detention pond, as indicated by the approved stormwater management plan for the Development covered by the Permit. An access/maintenance easement to all stormwater facilities covered by the Permit will be granted/retained in favor of the permittee

under the Permit if access to the stormwater facilities will be restricted by the sale of any portion of the Planned Community. The State of North Carolina is hereby made a beneficiary of this Declaration to the extent necessary to enforce its stormwater runoff regulations. This paragraph may not be changed or deleted without the consent of the State of North Carolina.

SECTION 3. Use Restrictions.

A. Land Use And Building Type. No Lot shall be used for any purpose except for office and retail purposes. Notwithstanding the foregoing, during the Declarant Control Period, the Declarant may authorize any other use permitted for the Planned Community under the then applicable zoning classification for the Planned Community established by the City of Wilmington.

B. 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 nuisance to the Development. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the character of the Development as a first class office and retail center. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on the Owner's Lot which would tend to decrease the beauty of the Development as a whole or the specific area.

C. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time either temporarily or permanently without the written consent of the Association or its designee; provided, however, that this shall not prevent the use of a construction trailer or office on any part of the Planned Community until the construction of improvements are completed.

D. Construction in Common Elements. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

E. Signs. No signs (including "for sale" or "for rent" signs) shall be permitted on any Lot or in the Common Elements without permission of the Executive Board.

I. Subdividing. Subject to any rights reserved to the Declarant herein, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of

the Declarant during the period of Declarant control of the Association and thereafter by the Executive Board.

SECTION 4. Maintenance. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. All structures shall be kept neat and in good condition and repair. All shrubs, trees, grass and plantings shall be kept neatly trimmed and properly cultivated. Each Owner shall maintain and keep in good repair the exterior of all structures and all parking areas and other exterior facilities. Parking areas, sidewalks and grounds shall be kept clear and free of snow, ice, rubbish and obstructions of every nature with adequate drainage and lighting provided thereon. Striping on parking areas shall be renewed as necessary to remain bright and visible. Any structures damaged or destroyed by fire or other casualty shall immediately be repaired, replaced, or demolished and the site left clean and neat. Burned out light bulbs shall be replaced immediately.

## ARTICLE VII

### LOTS SUBJECT TO DECLARATION/ENFORCEMENT

SECTION 1. Lots Subject to Declaration. The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of the Planned Community and the Lots contained in it. All present and future Owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, their heirs, successors and assigns, as though such provisions were made a part of each and every deed of conveyance or lease, 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, unless terminated by the Lot Owners.

SECTION 2. Enforcement and Remedies. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns. The Executive Board shall be entitled to enforce its Articles of Incorporation, Bylaws and Rules and Regulations. In addition to the remedies otherwise provided for herein concerning the collection of Assessments, the following remedies shall be available:

A. Association to Remedy Violation. In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Charter or Rules and Regulations, the Executive Board or its designee, after 30-days notice, may enter upon the Lot and remedy the violation or perform the required maintenance or other activities, all at the expense of the Owner, and such entry shall not be deemed a trespass. The full amount of the cost of remedying the violation or performing such maintenance or other activities and shall be chargeable to the Lot, including collection costs and reasonable attorneys' fees. Such amounts shall be due and payable within 30 days after Owner is billed. If not paid within said 30 day period, the amount thereof may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot. In the event that any maintenance activities are necessitated to any Common or Limited Common Elements by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors of the Association, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot. Notwithstanding the foregoing, the Association shall not have a lien for the cost of any maintenance and repairs mentioned in this section if the Association is obligated to make such repairs or conduct such maintenance by virtue of yards or structures being Limited Common Elements.

B. Fines. The Association may establish a schedule of and collect fines for the violation of this Declaration or of the Association's Articles of Incorporation, Bylaws or Rules and Regulations. If an Owner does not pay the fine when due, the fine shall immediately become a part of and be added to the Annual Assessment against the Owner's Lot and may be enforced by the Association as all other Assessments provided for herein.

C. Suspension of Services and Privileges. The Association may suspend all services and privileges provided by the Association to an Owner (other than rights of access to Lots) for any period during which any Assessments against the Owner's lot remain unpaid for at least 30 days or for any period that the Owner or the Owner's Lot is otherwise in violation of this Declaration or the Association's Charter, Bylaws, or Rules and Regulations.

SECTION 3. Miscellaneous. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided herein are cumulative and are in addition to any other remedies provided by law.