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Jackson County, NC
Joe Hamilton Register of Deeds

BK 1573 PG 9-30

DECLARATION
OF
PROTECTIVE COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
HOLLYWALK
Section 1

THIS DECLARATION is made this the 2nd day of March, 2005, by OSCEOLA, LLC, a North Carolina Limited Liability Company whose members are MALCOLM MacNEILL and wife JOAN MacNEILL, MALCOLM MacNEILL, JR. and JENNIFER MacNEILL VanZANDT hereinafter referred to collectively as "Declarant".

RECITALS:

1. Declarant is the owner and developer of real property located in Jackson County, North Carolina, known as Hollywalk, described in a deed recorded in a deed recorded in Jackson County Registry of Deeds in Deed Book 1472 at Page 314 incorporated by reference herein and attached hereto as Exhibit A and hereinafter referred to as "Properties".

2. Declarant intends to sell and convey certain platted lots within the Properties to be hereinafter referred to as the "Development" and, before doing so, desire to impose upon them mutual and beneficial restrictions, covenants, equitable servitude and charges under the general plan or scheme of improvements for the benefit of all lots in the Development and for the benefit of the owners and future owners thereof; to create a community which is aesthetically pleasing and

functionally convenient; to create reciprocal rights between the respective owners of all such lots; to create privity of contract and estate between the grantors of such lots, their heirs, successors and assigns; and to operate as covenants running with the land for the benefit of each other and all other such lots in the Development and their respective owners, present and future.

3. Declarant subjects the Properties described in Exhibit A to these protective covenants, conditions and restrictions and the same shall attach to and encumber all of the single family residential subdivision lots within the Development.

4. This Declaration shall apply to all of the subdivision lots as they are shown on a plat recorded and filed in the Office of the Register of Deeds for Jackson County in Plat Cabinet 14 at Slide 107. The Declarant may file additional plats identifying lots in the Development and it is the intent that this Declaration shall apply to any additional plats of property that may be filed at a later time.

5. The Declarant reserves the right to sell, lease, assign, transfer, license and in any manner alienate or dispose of any rights, title, easements, interests and liabilities retained, accruing or reserved to it by this Declaration, to enforce these covenants, conditions, restrictions and easements, or any of them, and to exercise the various powers, duties, rights and privileges reserved in this Declaration, to some firm or corporation as successor to the Declarant or to a newly formed association of property owners, to be known as HOLLYWALK PROPERTY OWNERS ASSOCIATION, INC., organized in part for the purpose of enforcing this Declaration and carrying out the various duties and responsibilities hereof.

NOW THEREFORE, the Declarant declares that all the lots formed from the Properties and made a part of the Development are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved subject to the provisions of this Declaration, all of which are declared by the Declarant, and agreed by Declarant's successors in title, to be in furtherance of the plan of development established for the purpose of enhancing and protecting the value, desirability, and attractiveness thereof.

ARTICLE I
DEFINITIONS

The following terms used in this Declaration are defined as follows:

A. "Association" shall mean and refer to HOLLYWALK PROPERTY OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation with its principal place of business in Jackson County, North Carolina, which Association is operated pursuant to the Articles of Incorporation thereof.

B. "Common Areas" means all private roadways, easements for public and private utilities, pedestrian and recreation easements, and any other property or interest therein which the Declarant declares to be a Common Area.

C. "Committee" means the Environmental and Architectural Control Committee.

D. "Declarant" means Osceola, LLC, its successors and assigns.

E. "Declaration" means this document, the Declaration of Protective Covenants, Conditions, Restrictions and Easements for HOLLYWALK dated this the 2nd day of March, 2006, and as the same may be supplemented or amended from time to time.

F. "Dedication" means the act of committing that portion of the Properties to the purposes and provisions of this Declaration and making such portions part of the Development.

G. "Development" means that portion of the Properties which are platted into single family lots as a subdivision and shown on plats recorded in the Office of the Register of Deeds for Jackson County, in Plat Cabinet 14, Slide 107.

H. "Improvements" means all buildings, out buildings, streets, roads, driveways, parking areas, fences, retaining and other walls, hedges, poles, antennas, and any other structure of any kind or any land clearing whatsoever.

I. "Lot" means any separately numbered and separately described parcel of land, located within the Development as a single family residential subdivision lot, together with an appurtenant easement for pedestrian and vehicular egress, ingress and regress thereto over and across each road abutting and traversing said Lot which is shown on any recorded plat or referred to in any deed, but shall not include any area or parcel designated as "Common Area" or "Reserved" or "Future Development" or any area or parcel described upon a plat as a planned unit development. The boundary of the Lot shall be defined on any plat or in any deed, although

that portion which lies within the road right of way shown thereon or referred to therein shall be subject to certain additional restrictions as set forth in this Declaration.

J. "Owner" means:

- (1) Any person, firm, corporation or other legal entity (including the Declarant) who or which holds fee simple title to any Lot.
- (2) Any person, firm, corporation or other legal entity who has contracted to purchase fee simple title to any Lot, pursuant to a written agreement giving such purchase immediate possessory rights.

K. "Plat" means the map or plat of the Development which has been and may be recorded and filed for Hollywalk.

L. "Properties" means all that certain property described in Exhibit "A" attached hereto or any other property subsequently annexed to the Development by the Declarant pursuant to the provisions of this Declaration.

M. "Single-Family Dwelling" means the residential dwelling for one or more persons, each related to the other by blood, marriage, legal adoption, or alternatively, a group of not more than four adult persons who shall maintain a common household in such dwelling.

N. "Subdivision" means Hollywalk and any portion of the development which has been dedicated pursuant to this Declaration.

O. "Supplemental Declaration" means any future Declaration made by the Declarant which incorporates the provisions of this Declaration therein by reference and which shall to the property being annexed to the Development by the Declarant according to the terms and provisions contained hereafter.

ARTICLE II

LAND USE RESTRICTIONS

The following shall be applicable to all Lots within the Development and each Owner, as to his Lot, covenants to observe and perform the same:

A. All Lots shall be used exclusively for single-family residential purposes, and only one (1) single-family dwelling shall be permitted on any Lot. No business, commercial, fraternal, civic, historic or religious enterprise shall be conducted from any Lot or any building erected thereon.

B. No Lot shall be rearranged, moved, relocated, divided or subdivided, and no boundary line shall be changed, except with the express written permission of the Declarant or of the Committee. No resultant lot shall contain less than the square footage in the smallest platted lot in the Subdivision. There shall be no leasing of any part of a Lot.

C. No mobile home shall be erected or maintained on any Lot. However, prefabricated, modular or factory constructed homes may be permitted with the express approval of the Committee.

D. No travel trailer, mobile home, relocatable dwelling, tent, lean-to, accessory buildings or other temporary shelter may be placed or erected on any Lot except during the construction of the Lot's owners permanent house, not to be used for residential purposes and only with the express approval of the Declarant or the Committee. Declarant retains the right to use temporary structures for sales and office purposes and permanent utility structures such as pump house, pressure station, etc.

E. No single-family dwelling may consist of less than 2,000 square feet of enclosed heated space, exclusive of any heated garages, carports, patios, terraces and porches.

F. In order to assure that buildings and other structures will be located so that the maximum privacy will be available to each building and that the structures will be located with regard to the topography of the Lot taking into consideration the location of trees, shrubs and other aesthetic and environmental consideration, the Declarant shall have the right, absolutely and solely, to decide the precise site and location of any building or structure on any Lot for reasons which may, in the sole and uncontrolled discretion and judgment of the Declarant, seem sufficient. Such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site. Declarant may assign such right to the Committee.

G. No residential structure shall be located closer than ten (10) feet from the right of way of any street within the property, ten (10) feet from any side or rear Lot line and twenty-five (25) feet from any creek or stream, or as provided by any environmental laws or rules and regulations, or one hundred feet (100') from any public well.

H. No improvement shall be made to any Lot within the Subdivision without the express written approval of the Developer or the Committee as described in Article IV herein.

I. Construction of any improvements upon any Lot, once commenced, must proceed at a reasonable rate of progress and the certificate of occupancy shall be issued within eighteen (18) months from the date the building permit is issued. Improvements not completed or upon which construction has ceased for one hundred eighty (180) consecutive days, or which have been totally or partially destroyed and not rebuilt within twelve (12) months, shall be deemed to be nuisances. The Declarant may remove any such nuisance or repair or complete the same at the cost of the Owner of the Lot upon which said nuisance may exist. Landscaping must be completed within 24 months of the issuance of the certificate of occupancy.

J. Should any dwelling or other structure on any portion of the property be destroyed in whole or in part, it may be reconstructed in accordance with the original plans and specifications approved by the Declarant, or the Committee, and any subsequently approved modifications thereto or debris therefrom must be removed and the property restored to a neat and sightly condition as soon as practical but not later than six (6) months after the date of such destruction.

K. All Lots, whether occupied or unoccupied, and all improvements placed thereon, shall at all times be maintained in such a manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, the Declarant shall have the right, through its agents and/or employees to rectify such offensive situations at the cost of the owner of the lot. Neither the Declarant, its agents, employees or contractors shall be liable for any damage which may result from the performance of any services herein authorized.

L. Sewage from all residences shall be cared for by the Owner or occupants by connections to the public sewer system serving such lot, or if none is available, by installing a septic tank system, to which all plumbing fixtures, dishwashers, toilets or disposal systems shall be connected. Such system shall at all times be maintained in a proper sanitary condition by the Owner. The rules and regulations of the Jackson County Health Department and any other governmental agency with jurisdiction over the sewage disposal system installed upon each Lot, shall be complied with at all times. In no event shall such system be maintained in such a manner or location as to interfere with the maintenance of any existing water system on any adjoining property.

M. No fences, hedges or walls shall be permitted upon the property lines without the prior approval of the Declarant or the Committee.

N. No noxious or offensive activities or nuisances shall be permitted on any Lot.

O. Unless approved by the Declarant or the Committee no signs shall be erected or maintained on any portion of a Lot by anyone including, but not limited to, an Owner, a realtor, a contractor or subcontractor, except for the property owner's name signs of not more than two (2) square feet, and one sign of not more than five (5) square feet advertising the Lot for sale or rent. If permission is granted, the Declarant or the Committee shall have the right to restrict size, color and content of such signs.

P. No animals shall be kept or maintained on any Lot except the usual household pets, provided the same shall be kept reasonably confined on said Lot, or walked on a leash, so as not to become a nuisance, and so as to be in compliance with any government ordinances.

Q. No Owner shall accumulate on his lot any form of junk, inoperable vehicles, litter, refuse, or garbage except in sanitary receptacles provided for such purposes. Such receptacles shall be properly concealed from view from roadways and adjacent portions of the property and kept in a clean and sanitary condition.

R. Fuel tanks, electric and gas meters, air conditioning equipment, clothes lines, tools, equipment and other unsightly objects may not be maintained on any portion of the property except in screened areas as approved by the Declarant or the Committee which conceal them from view from roadways and adjacent portions of the property.

S. No outside burning of trash, garbage or other refuse shall be permitted on any of the Lots.

T. The pursuit of hobbies or other activities including, without limiting the generality hereof, the assembly and disassembly of motor vehicles and other mechanical devices, which might lead to disordered, unsightly or unkempt conditions, shall not be pursued or undertaken on any portion of the Development unless concealed in a garage.

U. Fuel storage tanks on any Lot shall be either buried below the surface of the ground or alternately, screened to the satisfaction of the Declarant or the Committee.

V. Trucks, one ton or larger, may not be parked overnight, nor may campers, recreational vehicles nor boats be parked for more than seven days on any portion of the

Development, unless garaged or completely screened in a manner approved by Declarant or the Committee. No vehicle may be parked on common areas for more than twenty-four (24) hours.

W. All cables, lines, wires or conduits of every nature and kind located on the property and used to connect the structures on the property to the main electrical, telephone and cable television service lines shall be underground.

X. No permanent dish or tower for television or radio or shortwave may be erected, placed or maintained upon any Lot, except ones no larger than thirty-six (36") inches in diameter.

Y. Driveway entrances from the lots to the common roadways shall have a hard surface finish (whether asphalt, concrete or brick) so that no gravel or mud will spill on to the common roadways.

ARTICLE III

ENVIRONMENTAL RESTRICTIONS

A. In order to implement effective and adequate erosion control and protect the purity and beauty of the streams and the property, the Declarant shall have the right to enter upon any Lot for the purpose of performing any grading or constructing and maintaining erosion prevention devices. Such entries shall, however, be made only after construction of improvements have commenced on such Lot or the soil thereof has been graded. Prior to exercising its right to enter upon a Lot for the purpose of performing any grading work or constructing or maintaining erosion prevention devices, the Declarant shall give the Owner of that Lot the opportunity to take any corrective action required by giving said Owner notice indicating what type of corrective action is required and specifying in that notice that immediate corrective action must be taken by the Owner. If said Owner fails to take the specified corrective action within ten (10) days, the Declarant may then exercise its right to enter upon the Lot in order to take the necessary corrective action. The cost of such work, when performed by the Declarant, shall be paid by the Owner of the Lot on which the work is performed. The provisions of this paragraph shall not be construed as an obligation on the part of the Declarant to perform grading work or to construct or maintain erosion prevention devices.

B. No Lot Owner shall obstruct, alter or interfere with the flow or natural course of the waters of any creek or stream within the Properties, and shall not erect or maintain a dam or

other similar structure on any such waterway except with approval of the Declarant or the Committee and proper governmental authorities.

C. Each Lot Owner shall keep drainage ditches located on his Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon his Lot as may be reasonably required for proper drainage.

D. No oil or gas wells shall be drilled on any Lot, nor shall there be any excavation for the extraction of minerals on any Lot. No earth shall be removed from a Lot except for construction of a residence and driveway and in those instances, excavation shall not commence until a reasonable time prior to commencement of construction. No industrial waste may be used as landfill or contaminated oil on roadway.

ARTICLE IV

THE ENVIRONMENTAL AND ARCHITECTURAL CONTROL COMMITTEE

A. The Environmental Control Committee (hereinafter referred to as the "Committee: shall have the following powers:

(1) All improvements constructed or place on any Lot must first have the written approval of the Committee. Such approval shall be granted only after written application has been made to the Committee in the manner and form prescribed by it. The application, to be accompanied by two (2) sets of plans and specifications, shall show the location of all improvements, if any, existing upon said Lot, the location of the improvements proposed to be constructed, the color and composition of all exterior materials to be used, proposed landscaping, and any other information which the Committee may require, including soil, engineering, and geologic reports and recommendations.

(2) No thinning, clearing, grading or construction of any driveway, building, fence, mailbox, property identification, sign, decorative appurtenances, exterior lighting, embellishments or other structure shall be erected, placed or altered, nor shall a building permit for such improvement be applied for on the property until the proposed building plans and specifications showing the front, rear and all side elevations, exterior materials, colors and finishes, including a plot plan detailing the proposed location of such building or structure, drives and parking areas, a complete landscape plan, the construction schedule and the identification of the building shall have been filed with and finally approved in writing by the Committee.

(3) No live trees, shrubs or other vegetation may be removed without the written approval of the Committee, except for personal firewood or for views. Approval of the removal of trees located with twenty-five (25) feet of the dwelling or within twenty-five (25) feet of the approved site for such buildings or drives and walks for such buildings shall be granted unless such removal will substantially decrease the beauty of the property.

(4) The approval of the Committee and the Declarant for a homeowner or his agent to go upon any Lot for purposes of topping trees in a reasonable manner to permit other Lots within the property to have a view of the mountains and valleys; provided, however, that the Declarant shall return any Lot to its previous condition, excepting the topping of trees, and shall do such topping only with the permission of the property owner and at times convenient to property owners so as to cause a minimum of inconvenience.

B. The Committee shall be composed of three (3) members, to be appointed by Declarant. Committee members shall be subject to removal by Declarant and any vacancies from time to time existing shall be filled by appointment by Declarant, or in the event of Declarant's failure to do so within two (2) months after such vacancy, then by the Association through the action of the Board. The power to appoint or remove Committee members shall be transferred to the Association with eighty (80%) percent of all the property in the Development has been sold by the Declarant.

C. The Committee may disapprove any application:

(1) If such application does not comply with this Declaration;

(2) Because of the reasonable dissatisfaction of the Committee with grading plans, location of the proposed improvements on a Lot, finished ground elevation, color scheme, finish, design proportions, architecture, shape, height, or style of the proposed improvements or the materials used therein.

(3) If, in the sole judgment of a majority of the Committee, reasonably exercised, the proposed improvements will be inharmonious with the Development, or with the improvements erected on other lots.

D. The Committee shall, from time to time, adopt written rules and regulations of general application governing its procedures which shall include, among other things, provisions

for the form and content of applications; provisions for the notice of approval and disapproval, including a reasonable time period for approval by reason of failure to disapprove, etc.

E. The Committee may grant reasonable variances or adjustments from the provisions in this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to Owners of other Lots.

F. At any time prior to the completion of construction of an improvement, the Committee may require a certification, upon such forms as it shall furnish, from the contractor, Owner, or a licensed surveyor that such improvement does not violate any setback, ordinance, or statute nor encroach upon any easement or right-of-way of record.

G. Notwithstanding the approval by the Committee of plans and specifications or its inspection of the work in progress, neither it, Declarant, nor any person acting in behalf of any of it shall be responsible in any way for any defects in any plans or specifications or other material submitted to the Committee, nor for any defects in any work done pursuant thereto. Each person submitting such plans or specifications shall be solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant thereto.

ARTICLE V

ADDITIONAL COVENANTS

A. The Declarant reserves the right to assign the various review and approval functions set forth in this Declaration to some successor party, or to an Association of Property Owners organized for this purpose. An assignment by the Declarant of its review and approval functions under this Declaration shall be recorded as a Supplementary Declaration to this Declaration.

B. When in this Declaration certain rights, powers or duties are reserved to Declarant or to the Committee, it is intended that the Committee shall have such duties, powers and responsibilities when appointed by the Declarant, or the Association if such duties, powers and responsibilities are assigned to it by the Declarant. However, prior to the appointment of the Committee, or any assignment to the Association, the Declarant shall have such duties, powers and responsibilities.

C. The Declarant will supply water to the Lots for domestic use by the Lot Owner.

At the time of the tap-in, the owner shall pay a tap-in fee of two hundred and fifty dollars (\$250.00) or the actual cost of the tap-in if it is greater than that. Thereafter the Owner shall pay a periodic fee to Declarant on a pro-rata basis at actual cost for the operation of the water system. Operation includes but is not limited to drilling wells, laying pipes, maintaining, repairing and replacing the pipes, operating pumps and storage facilities, testing and cleaning the water and all other necessary to operate a community water system.

ARTICLE VI
THE ASSOCIATION

A. Hollywalk Property Owners Association is a North Carolina non-profit corporation organized to further promote the common interest of the property owners in the Development, enforce the provisions of this Declaration, accept such responsibilities as are assigned to it by the Declarant, and shall have such powers as are set forth in its Articles and By-Laws.

B. The members of the Association shall consist of:

- (1) Every person, firm, corporation, or other legal entity having a vest possessory interest in any Lot;
- (2) The spouse and/or children of a member described in subparagraph (1) above who have the same principal residence as such member; and
- (3) Persons who by virtue of contractual agreements with the Development are entitled to membership on the Association.

C. The rights, duties, privileges and obligations of membership in the Association are set forth in its Articles and By-Laws. In the By-Laws it is stated that voting privileges are limited to one vote per lot owned.

ARTICLE VII
TERM AND AMENDMENT

A. The provision of this Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in the Development until January 1, 2020, A.D., after which time the same shall be automatically extended for successive periods of ten (10) years each, unless upon the affirmative vote of two-thirds (2/3) of the Owners of Lots subject to this Declaration it is agreed to change them in whole or in part;

B. This Declaration may be amended by the Declarant until seventy-five (75%) per cent of the lots have been conveyed or contracted for conveyance (so long as the amendment provides for more restrictive requirements on the remaining unsold lots and not retroactive to those previously conveyed or contracted for), and thereafter until January 1, 2020, by an instrument signed by not less than seventy-five (75) per cent of the Owners of Lots in the Development which are subject to this Declaration and thereafter, by agreement of not less than seventy-five (75) per cent of the Lot Owners, provided that no Amendment shall alter any obligation to pay assessments as herein provided, or affect any lien for the payment of same. Any amendment must be duly executed by (a) requisite number of such Owners required to affect such amendment or, (b) by the Association, in which latter case such amendment shall have attached to it a copy of a resolution of the Board of Directors of the Association attesting to the affirmative action of the requisite number of such Owners to effect such amendment, certified by the Secretary of the corporation.

ARTICLE VIII

EASEMENTS

A. The following perpetual easements over each Lot, together with the right of ingress and regress to the extent reasonably necessary to construct, repair and replace such road and utility easements, are expressly reserved to the joint use of the Declarant and each Owner, their respective heirs, administrators, successors and/or assigns:

(1) Roads: A roadway easement as particularly defined upon each recorded plat of survey entitled "Hollywalk", which easement can also be used for utilities.

(2) Utilities: A five (5) foot wide strip running along the inside of all Lot lines for the installation, maintenance and operation of utilities (water, electric and telephone), including radio and television transmission cable lines, conduits, water mains and the accessory right to locate guide wires, braces or anchors or to cut, trim or remove trees and plants, wherever necessary upon such Lots in connection with such installation, maintenance and operation.

(3) Other Easements: Any other easement particularly set forth in any deed from Declarant for a Lot in the Development, or upon any recorded plat of the Development.

B. The areas of any Lots affected by the easements reserved herein, but not being currently used for roadway purposes, shall be maintained continuously by the Owner of such Lot, but no structures or other material shall be placed or permitted to remain or other activities.

C. No Owner shall have any claim or cause of action against Declarant or its licensees arising out of the exercise or non-exercise of any easement reserved hereunder or shown on the Plat, except in cases of willful or wanton misconduct.

D. The Declarant reserves the right to subject any Lot within the Development to a contract or easement with Duke Power for the installation of underground electric cables which may require an initial contribution and/or the installing of street lighting, and which will require a continuing monthly payment to Duke Power by the Owner of each building constructed on a Lot. The Declarant also reserves the right to subject any Lot within this Development to similar contracts or easements with Verizon or any other utility company, including cable television.

E. There shall be no access from any Lot on the perimeter of the Development to any lands adjacent to such perimeter Lot and no Owner may grant a right of way through his Lot for the purpose of affording access to property not within the Development without the permission of the Declarant. This provision shall not apply to the Declarant.

ARTICLE IX

COVENANTS FOR MAINTENANCE AND SECURITY ASSESSMENTS

A. Prior to the conveyance of the Common Areas to the Association as hereinafter provided, the Declarant shall be responsible for providing the services set forth in Section B below and for collecting assessments set forth in this Article. Upon the conveyance of the Common Areas to the Association, the Association shall thereafter provide the services set forth in Section B and collect the assessments set forth in this Article.

B. The annual assessments levied as aforesaid shall be used as follows:

(1) To maintain and repair all private roads and bridges constructed with the Common Areas to the standard as such roads were in at the time of their completion, to maintain all landscaping adjacent to such roads in a manner consistent with the overall appearance of the Development and to maintain and repair all street lights installed along such roads;

(2) To provide such security services as may be deemed reasonably necessary for the protection of the Subdivision, including Common Areas and all Lots from theft, vandalism, fire and damage from animals;

(3) To maintain all Common Areas and structures located therein;

(4) To pay all ad valorem taxes, if any, levied against the Common Areas and any property owned by the Association;

(5) To pay all premiums on all hazard insurance carried by the Owner of the Common Areas and all public liability insurance carried by the Association pursuant to its By-Laws;

(6) To pay all legal, accounting and other professional fees incurred by the Declarant or the Association in carrying out the duties as set forth herein or in the By-Laws.

C. The Declarant, for each Lot, hereby covenants and each Owner of any Lot by acceptance of a deed, is deemed to covenant and agree to pay the annual assessments in such amounts necessary so as to pay for the services set forth in Section B of this Article, and charges and special assessments for capital improvements, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment charge is made. The personal obligation for delinquent assessments or charges shall pass to the Owner's successor in title.

D. In addition to the annual assessments authorized above, the Declarant, or after conveyance of the Common Areas, the Association, may levy, in any year, a special assessment applicable to that year 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 Areas, including fixtures and personal property related thereto, and the common roadways serving the Development or for the purpose of meeting any unanticipated expenses related to the Common Areas. Such special assessments may be levied only after obtaining the written consent of the Owners of at least fifty-one (51%) per cent of the aggregate number of Lots then subject to the Declaration.

E. The Declarant or the Committee or the Association may levy an impact fee to be paid upon the submission to it of plans for improvements. The impact fee will be to cover the

costs of repair to the common areas and roads as a result of the improvements by the Owners. The impact fee is a minimum of \$750 or the actual cost of repair, whichever is the greater, not to exceed \$ 1,500.00 payable upon the submission to the Committee of plans identified in Article IV A(1). The Declarant reserves the right to increase the fee if it so desires.

F. The annual and special assessment rates shall be determined as follows:

(1) Both annual and special assessments must be fixed at a uniform rate for all Lots.

(2) The amount of the aggregate annual assessments for each year shall be the amount necessary to fund the expenses described in Section B of this Article. Until January 1 of the calendar year following the first conveyance of the first Lot, the maximum annual assessment shall be \$250.00 per unimproved lot and \$350.00 per improved Lot. For each calendar year thereafter, the maximum annual assessment may be increased by up to fifteen (15%) per cent of the prior year's maximum annual assessment by the appropriate assessing authority as set forth in Section A of this Article. If the annual assessment is not increased by the maximum amount permitted, the difference between the actual increase made and the maximum increase permitted for that year shall be computed and the assessment may be increased by that amount in a future year by the appropriate assessing authority as set forth in Section A of this Article.

(3) Any increase in the annual assessments in excess of that permitted in subsection (2) of this Section may be levied only after obtaining the written consent of the Owners of at least fifty-one (51%) percent of the aggregate number of Lots then subject to the Declaration.

G. All annual and special assessments on the Lots shall be billed and collected by the Association. The Association shall be responsible for collecting such assessments from its Lot Owners and remitting same to Declarant or, after conveyance of the Common Areas, to the Association.

H. The annual assessments provided for herein shall commence for each Lot upon the recording of a plat of such lot and upon the completion of the street on which such Lot fronts. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Declarant reserves the right to pay only an amount of common expenses attributable to lots owned by it to the extent that such expenses are not paid by assessments

receivable from lot owners other than the Declarant. The Declarant or, after conveyance of the Common Areas, the Board of Directors of the Association, shall fix the amount of the annual assessments against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due dates shall be established in such written notices.

I. Any assessment not paid within sixty (60) days after the due date shall bear interest from the due date at the rate of twelve (12%) per cent per annum. In addition to such interest charge, the delinquent Lot Owner shall also pay such late charge as may have been theretofore established by the Declarant or, after the conveyance of the Common Areas, the Board of Directors of the Association, to defray the costs arising because of late payment. If any assessment is not paid within sixty (60) days of the due date thereof, the amount of such assessment (together with interest computed at the simple rate of twelve (12%) per cent per annum from and after the due date thereof) and any cost of collection (including reasonable attorney fees, if any) shall at the option of the Board, constitute and become a lien upon said lot as of the due date thereof upon the filing of notice thereof with the Jackson County Clerk of Court (which notice shall be filed within 120 days from the due date of the assessment). In such instance, the services rendered by the Association for the benefit of such lot and for which an assessment is levied shall be deemed to have been performed on the due date of such assessment and to "improve" thereon as defined in Chapter 44A, Article II, Part I of the General Statutes of North Carolina; the lien arising therefrom shall constitute a "lien of mechanics, laborers and materialmen dealing with the owner", and such lien may be perfected and enforced pursuant to the provisions of said Part I. The lien created hereby shall not, however, be superior to any institutional mortgage or deed of trust recorded prior to the filing of the Notice of Claim of Lien or any other statutory lien having priority or otherwise provided by law. Any action to enforce said lien may, at the Association's option, include a prayer for collection of assessments levied against the lot since the filing date of the Notice of Claim of Lien. The Association may purchase the property at any sale thereof contemplated under Section 44A-14 of the General Statutes of North Carolina.

J. The Association may, at its election, simultaneously pursue each and every other remedy which it may have available to it for the enforcement and collection of any delinquent assessment.

K. At any time upon request, the Association shall furnish to any member a written statement certifying the amount of assessments levied against its lot and balance of such assessments then due. Such written statement shall estop the Association from the making of any contrary claims against any person, firm, corporation or other legal entity (other than the requesting member) who may have taken affirmative action and detrimental reliance upon said statement.

L. The lien of the assessments provided for herein shall be subordinated to the lien of any first mortgage or deed of trust on a Lot or any mortgage or deed of trust to the Declarant. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided. However, foreclosure of any proceeding in lien thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer provided, however, that the Declarant, or after conveyance of the Common Areas, the Board of Directors of the Association, may in its sole discretion, determine such unpaid assessments to be an annual or special assessment, as applicable, collectable pro rata from all Lot Owners including the foreclosure sale purchaser. Such pro rata portions are payable by all Lot Owners notwithstanding the fact that such pro rata portions may cause the annual assessments to be in excess of the maximum permitted under Section E of this Article. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

ARTICLE X

REMEDIES

A. Declarant, the Association, and each person(s) or entity to whose benefit this Declaration inures may proceed at law or in equity to prevent the occurrence, continuance, or

violation of any provisions of this Declaration, and the Court in such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees.

B. Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude as aggrieved party's resort to any other remedy at law or in equity.

No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provisions of this Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

C. The Board may suspend all voting rights, if any, and the right to use common areas (except for ingress and egress to the Lot) of any Owner for any period during which any Association Assessment against such Owner remains unpaid, or during the period of any violation of the provisions of this Declaration by such Owner, after the existence thereof has been declared by the Board.

ARTICLE XI

GRANTEE'S ACCEPTANCE

Each grantee of purchase of any Lot shall, by acceptance of a deed or other instrument conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, accepts the deed or contract subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges and immunities of Declarant. By such acceptance grantee of purchaser shall for himself, his heirs, assigns, devisees, personal representatives, grantees, successors, lessees, and/or lessors, covenant, consent and agree to and with the Declarant and the grantee or purchaser of each Lot to keep, observe, comply and perform the covenants, conditions and restrictions contained in this Declaration.

ARTICLE XII

ANNEXATION

A. Declarant may, from time to time and its sole discretion, annex to the Development any other real property owned by Declarant which is contiguous or adjacent to the Development.

B. Declarant shall effect such annexation by recording a plat of the real property to be annexed and by recording a Supplemental Declaration which shall:

- (1) Described the real property being annexed and designate the permissible uses thereof;
- (2) Set forth any new or modified restrictions or covenants which may be applicable to such annexed property, including limited or restrictive uses of Common Areas; and
- (3) Declare that such annexed property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the applicable provisions of this Declaration. Upon the recording of such plat and Supplemental Declaration, the annexed area shall become a part of the Development, as fully as if such area were part of the Development on the date of recording of this Declaration, subject to any modifications set forth pursuant to subparagraph (2) above.

C. The property so annexed will be accessed through the subdivision on roads presently existing or hereafter constructed. Utilities may be placed on or under the roads. The access and the utilities to the annexed property is hereby declared not to be an additional burden to the other lots in the subdivision which would give rise to any equitable or legal rights by the other owners to prevent such access or utilities. The Declarant retains the right to grant easements for access and utilities over the subdivision roads.

ARTICLE XIII

RIGHT OF FIRST REFUSAL

For so long as the Developer owns any Lot, but not longer than twenty (20) years from the date of this Declaration, the Developer shall have the absolute right of first refusal to purchase any Lot already sold by the Developer to another Owner. The Developer shall have thirty (30) days after notification by certified mail, return receipt requested, by any owner desiring to sell such Lot to purchase the same pursuant to the same terms and conditions of any bona fide offer which the owner

is prepared to accept. If the Developer waives or fails to exercise this right of first refusal, it shall furnish a certificate so stating in recordable form upon the request of the Owner.

ARTICLE XIV

SEVERABILITY

Each provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

ARTICLE XV

CAPTIONS

Paragraph captions in this Declaration are for convenience only and do not in any way limit or amplify the terms or provisions thereof.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the 2 day of March, 2005.

DECLARANT:

OSCEOLA, LLC

By: Joan G. MacNeill
JOAN G. MacNEILL
Manager

NORTH CAROLINA
JACKSON COUNTY

I, the undersigned, a Notary Public in and for said County and State aforesaid, do hereby certify that **JOAN G. MacNEILL**, the manager of OSCELOA, LLC, a North Carolina limited liability company, personally appeared before me and acknowledged the execution of the foregoing instrument, for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this the 2 day of March, 2005.

My Commission Expires:
4/18/07

[Handwritten Signature]
NOTARY PUBLIC



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