

STATE OF SOUTH CAROLINA)
)
) DECLARATION OF COVENANTS AND
) RESTRICTIONS FOR WESTCHESTER
COUNTY OF PICKENS)
) SUBDIVISION, PHASE I

THIS DECLARATION made this 30th day of August, 1994, by Mossie Smith Development, Inc., hereinafter referred to as Owner/Developer.

WHEREAS, the Owner/Developer is the owner of the Real Property which is the subject of this Declaration and desires to create a residential community in accordance with a uniform plat of development to preserve and maintain property values, to maintain the natural beauty of the Real Property, to guard against construction thereon of poorly designed or proportioned structures built of improper or unsuitable materials, to obtain a harmonious architectural scheme and to create a liveable environment, for the benefit of future purchasers of the Real Property; and

WHEREAS, the Owner/Developer also deems it desirable in order to accomplish the said purposes to create an Architectural Committee to which shall be delegated the powers of administration of some of the aforesaid functions.

NOW, THEREFORE, for and in consideration of the aforesaid considerations, and in further consideration of the mutual covenants, conditions, reservations, servitudes and easements herein created for the benefit of the Owner/Developer, its successors and assigns, and the future owners of the Real Property, the Owner/Developer hereby declares, creates and imposes upon the Real Property the following covenants, restrictions, easements, reservations and servitudes, which are hereby declared covenants running with the land, according to the terms hereof, as follows.

ARTICLE I

REAL PROPERTY SUBJECT TO THIS DECLARATION

1.1 Existing Property. The Real Property which shall be held, transferred, sold, conveyed and occupied subject to these Covenants are all the numbered lots shown on a plat of Westchester Subdivision, Phase I, made by Robert R. Spearman, Surveyor, R.L.S. #3615, dated April 11, 1994, and recorded in the RMC Office for Pickens County, in Plat Book 65, at Page 106-107.

1.2 Additions to Existing Property. Additional Real Property, including existing subdivisions, may become subject to these Covenants without the approval of any purchaser or transferee of the Owner/Developer by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property, which shall automatically extend the scheme of

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the Covenants and Restrictions of this Declaration to such property. Such Supplementary Declaration may contain such additions and modifications of these Covenants as may be necessary to reflect the different character of added properties, but in no event shall such supplementary declaration revoke, modify or add to the covenants established by this Declaration within the existing property as hereinabove described in Paragraph 1.1, without the approval of all property owners, except as hereinafter provided in Articles III, IV, and V.

1.3 Conflict with Zoning Statutes. In the event of any conflict of the provisions hereof with any zoning ordinances or statutes, or subdivision law or regulation, in effect on the date of recording of these Covenants, which would require a more stringent or strict standard, regulation or use than required herein, then the terms, conditions and requirements of such more stringent zoning or subdivision law, statute or ordinance shall prevail.

ARTICLE II

USES PERMITTED AND PROHIBITED IN RESIDENTIAL AREA

The uses permitted and prohibited and the terms, conditions and limitations hereinafter set forth in this Article II, Paragraphs 2.1 through 2.34, shall apply to all numbered lots in the subdivision, except where specifically provided to the contrary hereinafter.

2.1 Use for Single Family Residences. All lots shall be used exclusively for a single family residence and for residential or domestic purposes connected therewith not specifically prohibited by the terms of these Covenants.

2.2 Business Prohibited. No structure at any time situate on the Real Property shall be used for any business, commercial, amusement, hospital, sanitarium, school, clubhouse, religious, charitable, philanthropic or manufacturing purposes, or as a professional office, and no billboard or advertising signs of any kind shall be erected or displayed thereon, except such signs as are hereinafter permitted. No part of any structure thereon shall be used for the purposes of renting rooms therein or as a boarding house, motel, hotel, tourist or motor court or for transient accommodations. No duplex residence, garage apartment or apartment house shall be erected or permitted to remain on any numbered lot in the subdivision, and no structure at any time thereon shall be converted into a duplex residence, garage or apartment house. The prohibitions contained herein shall not apply to or any way be construed to apply to the clubhouse and recreational facilities to be construed and maintained on the area designated "Smith Park" on the above referred to plat which, in any event, is not a numbered lot in the subdivision.

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2.3 Street Obstructions. No fence, wall, hedge, shrub, bush, tree or other object, natural or artificial, shall be placed or located on any lot if the location of the same will, in the judgement of the Architectural Committee, obstruct the vision of any motorist upon any street or avenue shown on the subdivision plat, or otherwise be deemed not in the best interest of the development scheme of the subdivision by the Architectural Committee.

2.4 Square Footage Minimums and Height Restrictions. No residence or dwelling shall be constructed on any numbered lot shown on the above referred to plat containing less than 1,800 square feet of floor space, exclusive of porches, screened and unscreened, garages, basements and breezeways. In computing the square footage of any one story residence one-half credit shall be given for the square footage of the basement or below ground level portion of such building which is finished and heated. No story and one-half residence, two-story residence or split-level residence shall be constructed on any lot containing less than 1,900 square feet of floor space exclusive of porches, screened and unscreened, garages, and breezeways, and the ground level of such dwelling shall not have less than 950 square feet, exclusive of porches, garages and basements. Any dwellings constructed without a garage shall not have less than 2,000 square feet, nor shall any such two-story split level, or story and one-half dwelling have less than 2,200 square feet, exclusive of porches, garages and breezeways. The square footage minimum herein refers to heated, finished area. Variances from the strict requirements of the minimum square footage provisions of this paragraph may be made upon the unanimous consent of the Architectural Committee, due to special circumstances attributable to specific lots.

2.5 Detached Out-Buildings. No hot house, green house, summer house, cabana, outdoor fireplace, barbecue pit, swimming pool installation or other structure of any kind which is detached from the single family residence or utility area shall be placed or permitted to remain on any lot without the written approval of the Architectural Committee.

2.6 Setback lines. No building shall be erected on any lot nearer to the front lot line than thirty (30') feet. No residence shall be constructed nearer than ten (10') feet to any side lot line nor twenty (20') feet from the rear lot line. The Architectural Committee hereunder may approve minor deviations from the requirements of this paragraph in the event that strict imposition of the provisions hereof would result in a hardship because of the size or topography of any individual lot, provided that such deviations do not violate City of Easley ordinance requirements.

2.7 Garages. Except where the topography of any lot otherwise dictates as approved by the Architectural Committee,

garages shall be located in order that entrances thereto shall not be visible from any street or avenue on which any portion of the lot abuts. In the event dwellings located on corner lots cannot strictly comply with this provision, then, in such event, the Architectural Committee shall be authorized to otherwise approve, in writing, the location of such garages on such corner lots. All such garages constructed on such lots must have installed thereon garage doors approved by the Architectural Committee, which shall remain closed when not in use.

2.8 Fences, Wall and Hedges. Except for driveways and walkways, no fence, hedge, wall or any other type of permanent structure or Utility Areas, or any part of the same, shall be erected, placed or allowed to remain in the area of any lot lying between the front building Setback Line as shown on the Plat or as otherwise established herein and the edge of any street or avenue. Hedges, fences and walls which do not violate other provisions contained in these covenants may be erected, placed or allowed in any area not hereinabove expressly prohibited, provided that such a fence, hedge or wall is constructed of such materials, design and location as shall be approved by the Architectural Committee.

2.9 Used Structures. No used building or structures shall be placed or permitted to remain upon the numbered lots of the subdivision without the written approval of the Architectural Committee.

2.10 Signs and Advertising. No sign of any character shall be displayed or placed upon any lot, except "for rent" or "for sale" signs, which signs shall refer only to that particular premises on which displayed, and shall not extend more than four feet above the surface of the ground, and shall be fastened only to a stake in the ground. The Architectural Committee may enter upon any lot and summarily remove and destroy any signs which do not meet the provisions of this paragraph; provided, however, that the Owner/Developer, or any person or entity designated by the Owner/Developer, may erect or maintain such commercial and display signs on such lots, temporary dwellings, sales offices, model houses or other structures as Owner/Developer may deem advisable for development purposes, so long as the Owner/Developer continues to own lots in the Subdivision.

2.11 Construction Delays. The construction of any residence or structure once commenced must be fully completed within one (1) year unless rendered impossible as a direct result of strikes, fires, national emergencies or natural calamities. Any building or structure not so completed or upon which construction has ceased for a period of ninety (90) consecutive days, or any building or structure which has been totally or partially destroyed by fire or other casualty and not rebuilt within one year, are hereby declared nuisances which may be removed by the Owner/Developer or its successors at the expense of the owner to be

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paid to the Owner/Developer or its successors on demand.

2.12 Paved Driveways. Prior to completion of construction of any residence on any lot, the owner of such lot shall install at such owner's expense a suitable driveway from the paved portion of the abutting street or avenue of a design, type of material and location approved by the Architectural Committee. All proposed driveways shall be submitted to the Architectural Committee for approval if constructed of a material other than concrete or asphalt.

2.13 Picnic Areas and Trash Burning. No picnic areas nor detached outbuildings shall be erected or permitted to remain on any numbered lot prior to the commencement of construction of a permanent residence thereon. No trash, rubbish, debris, waste material or other refuse shall be deposited or allowed to accumulate or remain on any part of a numbered lot after construction of a permanent residence thereon. No fires for the burning of trash, leaves, clippings or other debris or refuse shall be permitted on any lot except during construction of a permanent residence thereon.

2.14 Tents and Shacks. No shed, shack, trailer, tent or other temporary or movable building or structure of any nature or kind shall be erected, placed or permitted to remain on the Real Property; provided, however, that nothing contained herein shall prevent the use of a temporary construction shed during the period of actual construction of a dwelling or other building permitted hereunder nor the use of adequate sanitary toilet facilities for workmen during the period of such construction.

2.15 Trailers and Vehicles. No trailer, basement or other portion of an unfinished dwelling, garage or any outbuilding of any kind, shall at any time be used as a residence, either temporarily or permanently. No disabled or wrecked vehicle, mobile home or tent shall be placed, erected or permitted to remain on the Real Property nor shall any overnight camping be permitted on any numbered lot. Recreation vehicles such as boats, travel trailers, motor homes, etc. must be parked at the rear of the lot.

2.16 Fuel Tanks. Fuel storage tanks shall be buried below the surface of the ground.

2.17 Name and Number Plates. A plate or sign showing the number of the residence and the name of the occupants may be placed on any lot on which a building is located at the option of the property owner in accordance with the size, location, design and type of materials approved by the Architectural Committee.

2.18 Window Air Conditioning Units. No window air conditioning unit shall be installed on any side of any building which faces a street.

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2.19 Radio and Television Antennae. Exterior radio or television antennae shall be of a standard type and size, and shall be installed in a professional workmanlike manner. No other exterior electronic or electric equipment or devices of any kind shall be installed or permitted to remain on the exterior of any structure located on the Real Property unless the location, size and design thereof shall have been approved in writing by the Architectural Committee. Television satellite receivers shall be prohibited if located outside of a residence unless totally concealed by fencing and/or landscaping and unless the location and screening thereof has been specifically approved in writing by the Architectural Committee.

2.20 Nuisances. No illegal, noxious or offensive activity shall be permitted or carried on upon any part of the Real Property, nor shall anything be permitted which may be or become a nuisance, a source of embarrassment, discomfort or annoyance to the neighborhood. All property shown on the subdivision Plats is hereby declared to be a wildlife sanctuary and any hunting of any wild birds or animals is hereby prohibited.

2.21 Concrete Blocks. No concrete blocks or concrete bricks shall be used in the construction of any building or structure on any lot which may be visible from the exterior after grading has been completed, unless the design thereof has been approved in writing by the Architectural Committee.

2.22 Easements. Easements for the drainage of surface water as shown on the subdivision plats are hereby reserved by the Owner/Developer. Each owner of any property subject to said easements shall keep swales located thereon planted with grass or other ground covers, free and unobstructed and in a good state of repair and condition, and shall provide access for the installation of such culverts on such owner's property as may be reasonably required for proper drainage.

2.23 Utility Easements. The Owner/Developer hereby reserves and is given a perpetual, alienable and releasable easement for the installation of utilities, (including water, electricity, telephone, gas, cable TV and sewer lines) over, in and under a five (5') foot strip parallel to, and tangent with, all side lot lines of any lot, and over, in and under a ten (10') foot strip parallel to and tangent with all rear lot lines of any lots, as well as in and to all easements for water, gas, drainage, electricity and sewage as specifically shown on the recorded Subdivision plats. The Owner/Developer shall have the unrestricted and sole right and power of alienating, conveying and releasing the easements reserved under the terms of this paragraph. All such easements, including those designated on the subdivision plats, are and shall remain private easements. The side and rear lot line easements herein reserved and granted, in the event any Lot shall be hereafter resubdivided or replatted, as above provided, shall

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thereafter apply only to a lot as so resubdivided or replatted instead of applying to the lot as originally platted, except that no resubdivision or replatting shall affect easements specifically shown on the recorded Plat.

2.24 Access. There shall be no access from any numbered lot as shown on the subdivision plats on the perimeter of the property thereon shown, except to and from designated streets and roads located exclusively within the boundary or perimeter lines of Westchester Subdivision as shown on the Subdivision Plats.

2.25 Rubbish Removal. All builders and the owner of each lot, improved or unimproved, shall keep the same free of tall grass, undergrowth, dead trees, dangerous and dead tree limbs, weeds, trash, and rubbish, which Lot shall at all times be maintained in such a manner as to prevent the same from becoming unsightly, unsanitary or a hazard to health, and in a neat and attractive condition. In the event the owner of any lot fails to comply with the terms of this paragraph, the Owner/Developer and/or Homeowners' Association, shall have the right (but not the obligation) to go upon such Lot and to cut and remove tall grass, undergrowth, weeds, rubbish and any other unsightly or undesirable things and objects therefrom, and to do all other things and perform and furnish any labor necessary or desirable in its judgement to maintain the Lot in a neat and attractive condition, all at the expense of the owner of such lot, which expense shall become payable by the owner to the Owner/Developer and/or Homeowners' Association on demand. The failure of an owner of such a lot to reimburse such costs shall subject such lot to the imposition of a lien thereon for such expense to be entered in the same manner as assessments as hereinafter provided.

2.26 Street Signs, Maintenance. Property Owners of Lots agree to permit street signs, provided by Owner/Developer, to be erected on said lots nearest to the street or intersection of streets. Owner/Developer shall be responsible for the initial erection of said signs. Thereafter, individual property owners of the subdivision, or their Homeowners Association, shall be responsible for the maintenance of said signs, and the Owners of Lots upon which such signs are situated shall be responsible for the maintenance of the area surrounding the signs.

2.27 Subdivision Signs, Maintenance. Owner/Developer shall construct subdivision signs at the entrances to the subdivision, and shall landscape the area around said signs. Thereafter, it shall become the responsibility of the individual property owners, or the aforesaid Homeowners' Association, to maintain such signs.

2.28 Mailboxes. Each lot upon which a resident has been constructed shall have a mailbox installed thereupon of a type and size specified by the Architectural Committee. Such mailbox shall

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be properly maintained at all times by the lot owner and shall not be altered or replaced except by a new mailbox identical to the one originally installed or otherwise approved in writing by the Architectural Committee.

2.29 Unloading of Heavy Equipment; Damage to Streets and Curbs. No builder or property owner will unload heavy equipment on paved streets, and any builder or property owners damaging any of the streets or curbs in said subdivision will be responsible for the cost of repairing such damage.

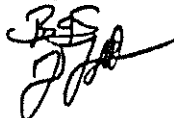
2.30 Boundary Pins. No property pins shall be removed by lot owners or builders and if said pins are removed, it shall be the responsibility and expense of said lot owner or builder to replace same.

2.31 Subdivision of Existing Lots. Lots shall not be resubdivided nor shall lot lines be changed so as to decrease in either width or area any numbered lot as shown on the subdivision plat, unless approved in writing by the Architectural Committee.

2.32 Sodded Front Yards. All yards of any numbered Lot existing between the front of a constructed dwelling on any lot and the paved street shall be sodded with a grass and in a manner approved in writing by the Architectural Committee. In the case of corner lots whereupon the dwelling thereon will be required by the Architectural Committee to face the corner of said lot, which location may result in a larger front yard than other lots in the subdivision, the Architectural Committee may, based upon the particular configurations of such corner lots, permit and approve areas smaller than the actual front yards thereof to be sodded.

2.33 Soil Erosion. No builder or property owner shall allow disturbed soil to erode and be deposited in or on any streets and/or storm drains of the subdivision. Construction of silt screens shall be required and approved by the Architectural Committee and installed prior to any soil disturbance. Any expense incurred by the Owner/Developer in cleaning up any such erosion deposits from said streets and storm drains in the subdivision shall be recovered from the property owner from whose lot such erosion arose.

2.34 Subdivision Street Lights. Property owners of lots agree to permit street lights, to be provided by Owner/Developer, to be erected on lots in the subdivision at the discretion of the Owner/Developer. Owner/Developer shall be responsible for the initial erection of said street lights. Thereafter, the individual property owners of the subdivision, or their HomeOwners' Association, shall be responsible for the maintenance of said street lights, and the lot owners upon which lots said street



lights are located shall be responsible for maintaining the area surrounding said street lights.

ARTICLE III

APPROVAL OF PLANS AND SPECIFICATIONS

3.1 Architectural Committee. For the purposes of insuring the development of the Real Property as an area with a pleasing aesthetic appearance, no building, structure, fence, wall, utility area, driveway, swimming pool or other structural improvement, regardless of size or purpose, whether attached to or detached from a main residence, shall be commenced, placed, erected or allowed to remain on any Lot, nor shall any additions to, or exterior changes in, or alterations thereto be made unless building plans and specifications covering the same, showing the nature, kind, shape, height, size, floor plans, location, materials to be used and orientation on the Real Property, together with such other information as shall be reasonably required by the Architectural Committee, shall have been submitted to and approved in writing by the Architectural Committee hereby established. Additionally, the Architectural Committee shall have all powers and authorities elsewhere conferred upon it under the terms and conditions of these Covenants.

Specifically, prior to the commencement of any construction on any numbered lot in the subdivision, each owner of such lot shall submit to the Architectural Committee, in duplicate, plans and drawings, which shall have been prepared in a one-eighth (1/8th) scale or larger, and which shall contain at a minimum the following:

- a. Floor plans
- b. Front, rear and side elevations
- c. The area of heated floor space
- d. Exterior building material to include manufacturer, color and texture (vinyl siding houses shall have a minimum of five (5") inch wide corners)
- e. Exterior color trim
- f. Roofing material, color and pitch (which shall be at least 8/12)
- g. Site plans showing foundations of all structures, walks, driveways, fences and drainage plans.

3.2 Committee Members. The Architectural Committee shall initially be composed of Bobby G. Sexton, Dwayne Bell and Towers Rice. In the event of the failure or inability for any reason of a member to act, or upon any resignation of a member from the Architectural Committee, the vacancy created shall be filled permanently or temporarily, as necessary, by the remaining members of the Architectural Committee.

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3.3 Successors. After the sale of all Real Property in the Subdivision by the Owner/Developer, the Architectural Committee as then constituted shall, upon presentation of a request by the legally constituted Homeowners' Association resign, and said Homeowners' Association shall have the right to designate members of the Architectural Committee, and thereafter, the Architectural Committee as so designated shall succeed to all the rights, duties and powers set out herein. Provided, however, that such request shall be made in writing, and shall be accompanied by a certified copy of the appropriate governing instrument(s) of such organization and such other documents as will show the authority of the person(s) making the demands to represent the Homeowners' Association. Provided, further, that if no such demand is made within one (1) year after the sale of all lots owned by the Owner/Developer in the Subdivision, the Architectural Committee shall designate three (3) owner-residents, subject to such owner-residents' consent, who shall then serve with all powers, duties and responsibilities as set out herein, until such time as a request, as contemplated herein, shall be made by the Homeowners' Association.

3.4 Standards of Disapproval. The Architectural Committee shall have the absolute and exclusive right to refuse to approve any building plan, specification, materials, design, lot grading or landscaping plan of any thing or structure which in the opinion of the Architectural Committee are not suitable or desirable for any reason whatsoever, including purely aesthetic reasons and reasons connected with the future development plans of the Owner/Developer of contiguous lands. In passing upon such matters the Architectural Committee may take into consideration the suitability of proposed materials, the quality of proposed workmanship, harmony of external design with the surrounding neighborhood and existing structures therein, and the effect and appearance of such construction as viewed from neighboring properties.

3.5 Failure to Approve and Disapprove. In the event that the Architectural Committee fails to approve or disapprove any matters within the scope of its authority within thirty (30) days after same have been submitted to it, or in any event, if no suit to enjoin such matter or thing has been commenced prior to completion or the doing of such matter or thing, such prior approval shall not be required and this Covenant shall be deemed to have been fully complied with and no suit or claim shall thereafter be available to the Architectural Committee, to the owner of any Real Property, or the Owner/Developer.

3.6 Application Time. Applications for approval as required herein shall be made to the Architectural Committee or to any member thereof, and the date of receipt of such application shall be the time for the commencement of the running of said thirty (30) days from the date of such submission.

ARTICLE IV

WAIVER OF SETBACKS, LOCATION AND SIZE OF IMPROVEMENTS ON LOTS

The Architectural Committee hereinabove constituted under the terms of Article III is hereby authorized and fully empowered by unanimous vote of all of its members to waive compliance with, approve or ratify in the construction or alteration of any building or other structure upon the Real Property, or in the use, and failure to use, any of the Real Property the subject hereof, any and all minor violations of any of the requirements set forth in these Covenants, if, in the opinion of all of the members of said Architectural Committee, the same shall be necessary to prevent undue hardships because of special circumstances attendant to the Real Property involved, and provided that such waivers do not violate any City of Easley Ordinance. The waiver, approval or ratification by the Architectural Committee in accordance with the terms of this paragraph shall be binding upon all persons, and the powers of waiver herein conferred upon the Architectural Committee shall be construed liberally so as to affect any matters or things included within the terms and conditions of these Covenants.

ARTICLE V

AMENDMENTS AND MODIFICATIONS TO COVENANTS

5.1 Reservation. The Owner/Developer reserves and shall have the right to amend this Declaration of Covenants and Restrictions for the purpose of resolving any ambiguity in, or any inconsistency between the provisions contained herein, and to make any additional covenants and restrictions applicable to the Real Property which do not substantially alter or change the standards of the Covenants and restrictions herein contained.

5.2 Additional Covenants. No property owner, without the prior written approval of the Owner/Developer, may impose additional covenants or restrictions on any part of the Real Property shown on the Plats of Westchester Subdivision.

ARTICLE VI

TERMS AND ENFORCEABILITY

6.1 Enforcement. If the Owner/Developer or its successors and assigns shall violate or attempt to violate any of the Covenants herein, it shall be lawful for any person owning any Real Property situated in Westchester Subdivision, as shown on the subdivision Plats to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate

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any of such covenants, either to prevent him or them from so doing, or to recover damages and other dues for such violation. Invalidation of any one or more of these covenants by a judgment or Court Order shall in no wise affect any of the other provisions hereof which shall remain in full force and effect.

6.2 Loan Requirements. If any of these covenants shall be found to be contrary to the recommendations or policies of the Federal Housing Administration, the Veterans Administration or any other recognized institution, agency, public or private, granting or insuring loans, and shall render any Lot in said subdivision unacceptable for any such loan, the Owner/Developer shall have the authority to alter, amend or annul any such Covenants as may be necessary to make any of the Real Property herein acceptable and eligible for such loan.

6.3 Term of Covenants. These Covenants and restrictions, as altered, annulled and amended from time to time as provided for herein, unless released or waived as herein provided, shall be deemed covenants running with the land and shall remain in full force and effect until the first day of September, 2019, and, thereafter, these Covenants shall be automatically extended for one (1) successive period of twenty-five (25) years unless within six (6) months prior to September 1, 2019, a written agreement executed by a majority of the then owners of the Real Property shown on the subdivision plats shall be recorded in the RMC Office for Pickens County, South Carolina, in which written agreement any of the Covenants, restrictions, reservations and easements provided for herein may be changed, modified, waived or extinguished, in whole or in part, as to all or any part of the Real Property then subject hereto, in the manner and to the extent provided in such written agreement.

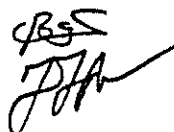
ARTICLE VII

DEFINITIONS

The following words when used in these Covenants or in any Supplemental Declaration shall have the following meanings unless the context in which such terms are used shall clearly indicate to the contrary, to-wit:

7.1 Real Property. "Real Property" shall refer to the numbered lots in such existing land, tenements, real estate, real properties, and future additions thereto, if any, the subject of these Covenants.

7.2 Lot. "Lot" shall mean and refer to any numbered plot of land shown on any recorded subdivision plat which is intended for use and occupancy as a single-family dwelling and as further defined in Paragraph 2.1 above.



7.3 Plat. The term "Plat" shall mean and refer to the recorded plat of Westchester Subdivision Phase I made by Robert R. Spearman, R.L.S. #3615, in accordance with the date and book and page of recording in the RMC Office for Pickens County, South Carolina, as set forth in Paragraph 1.1 above, as well as any further subdivision plats of lots in Westchester Subdivision.

7.4 Owner/Developer. The term "Owner/Developer" shall mean and refer to Mossie Smith Development, Inc., the present owner and developer of Westchester Subdivision Phase I, or any successors or assigns thereof in the development of the Real Property.

7.5 Homeowners' Association. The term "Homeowners' Association" shall mean and refer to the Homeowners' Association, duly and lawfully established under the laws of the State of South Carolina, as provided for in Paragraph 10.2 hereof, which shall be known as the Westchester Homeowners' Association, Inc.

7.6 Covenants. The term "Covenants" shall mean and refer to the within Declaration of Covenants and Restrictions applicable to Westchester Subdivision Phase I as now or hereafter amended, modified, and extended to include additional properties.

7.7 Paragraph Headings. All "Paragraph Headings" appearing under each numbered Article or to the right of each numbered paragraph of each Article have been inserted in these Covenants for ease of reference only and are not to be construed as a part thereof.

ARTICLE VIII

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8.1. Names or numbers painted or otherwise placed on mailboxes and/or any other house numbers will be positioned in a professional manner, and in accordance with the specifications established and provided by the Architectural Committee.

8.2. The owner of the Real Property which may adjoin or abut a stream in the subdivision shall keep his property trimmed, cut, and properly maintained so as to present a pleasing appearance, maintain the proper contour of the stream and prevent erosion. No trash, garbage, sewage waste water (other than surface water), rubbish, debris, ashes, or other refuse shall be deposited in the stream.

8.3. All garbage containers shall be placed in an inconspicuous location at the rear of the lot and mounted on a stand, screened from view and kept in a neat manner.

ARTICLE IX

LIMITATION OF LIABILITY

Conflicting language hereinabove to the contrary notwithstanding, any property owner may rely on the decision of the Architectural Committee, and such property owner as may act in conformance with the decision(s) of the Architectural Committee affecting his property, made upon his request to the Architectural Committee as prescribed herein, shall be presumed to be in conformity with this Declaration of Covenants unless such decision shall have been procured upon a wilful misstatement of fact. Decisions of the Owner/Developer and/or the Architectural Committee, including Supplemental Declarations of Covenants, shall also be presumed to be in conformity with this Declaration of Covenants and its scheme and design.

ARTICLE X

RECREATIONAL FACILITIES, COMMON AREAS AND MAINTENANCE CHARGES

10.1. The Owner/Developer may build, at its expense, a club house, a swimming pool and related facilities, picnic area and off street parking on the area designated "Smith Park" as shown on plat recorded on Plat Book 65, at Pages 106-107 in the RMC office for Pickens County, South Carolina.

10.2. The Owner/Developer will form a not-for-profit corporation to be known as "Westchester Homeowners' Association, Inc.", hereinafter referred to as "Association", which will own and operate any recreational facilities and common areas of the Westchester Subdivision. The Owner/Developer will initially exercise full control over the affairs and activities of the Association until all of its lots in the subdivision have been sold, or until such time as the Owner/Developer shall decide to transfer control to the property owners in the subdivision, which may occur prior to the sale of all lots in the subdivision by the Owner/Developer, at which time control of said Association may be transferred to a Board of Directors to be elected by the property owners in the subdivision. The owner of every lot located in the subdivision known as Westchester, including all phases of the existing and future development of land now owned or which may hereafter be acquired by the Owner/Developer, which the Owner/Developer may elect to include as a part of Westchester Subdivision, shall be entitled to membership in the Association and to the use and enjoyment of the recreational facilities owned thereby, upon complying with the rules and regulations concerning the use and enjoyment thereof and the covenants and restrictions of said subdivision. The owners, other than the Owner/Developer, of lots in said subdivision will be entitled to make use of the aforementioned recreational facilities of the subdivision by paying the annual or special assessments hereafter in force and effect as

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provided herein. During the time the Owner/Developer continues to maintain and exercise control over the activities of the Association it reserves the right to sell memberships to persons or entities other than lot owners in Westchester Subdivision, for the use of such clubhouse, swimming pool and related facilities upon such terms and provisions as it may decide to require. When the Owner/Developer elects to divest itself of control and authority for the operation of the Association, as provided herein, a new Board of Directors of such Association shall be formed by election from among the property owners of the subdivision. The membership of the Association will consist of the owners of numbered lots in Westchester Subdivision according to the recorded plats in connection therewith. There shall be one (1) vote for each lot whether owned singularly or as a tenants in common and regardless of the number of lots used to create one residence, except as hereinafter provided. The Owner/Developer shall be entitled at all times in connection with such "Westchester Homeowner's Association, Inc." to have two (2) votes for each lot it continues to own in the subdivision. At such time as the Owner/Developer determines that it will divest itself of control of such Association, as provided herein, it will cause an election to be held by the above referred to lot owners entitled to vote for a new Board of Directors of such Association to be formed. Thereafter, the Association shall be operated in accordance with its Bylaws by its Board of Directors and members who shall consist of lot owners in Westchester Subdivision. Voting rights, as well as rights to use the recreational facilities, shall be subject to the Bylaws of the Association. Membership in the Homeowner's Association and recreational facilities shall be appurtenant to and may not be separated from ownership of the property which is subject to assessments as hereinafter provided. An owner of up to two (2) numbered lots in the subdivision, other than the Owner/Developer, which lots shall be contiguous to one another, shall be entitled to only one (1) vote as aforesaid and shall be assessed the herein referred to Association fees on only one (1) lot during their ownership thereof. Owners, other than Owner/Developer of two (2) or more lots not contiguous with one another shall be entitled to one (1) vote per lot and shall be assessed the herein referred to Association fees on each lot so owned, except as may be otherwise provided herein.

10.3. All numbered lots on the recorded plats of Westchester Subdivision shall be subject to an annual maintenance charge or assessment which shall be hereby established at an initial rate of Three Hundred Fifty (\$350.00) Dollars per year, based upon a calendar year. The first full annual assessment in the amount of Three Hundred Fifty (\$350.00) Dollars shall be due and payable in advance on the January 1st next following the date of closing of or purchase of a lot in such subdivision and thereafter shall be due and payable in advance on each and every succeeding January 1. When a Grantee of a lot in the subdivision obtained from the Owner/Developer hereafter takes title to a lot in



the subdivision such Grantee shall pay unto the Owner/Developer, or the Association if then in existence, a proportional share of the annual assessment then in effect for that calendar year, to be calculated from the date of closing of such sale to the end of such calendar year, such amount to be due and collected at such closing. Special assessments may be determined necessary from time to time by the Owner/Developer, or the Association when established, to cover expenses in excess of the proceeds derived from the annual assessment referred to above. The initial annual assessment established herein shall remain effective in such amount for a period of one (1) year after the date this instrument is executed. Thereafter, the annual assessment amount shall remain the same until it is increased, decreased or discontinued, as from time to time may be determined by the Owner/Developer, or Association when established. Any special assessment found necessary to carry out the purposes of these covenants by the Owner/Developer, or Association when established, shall be due and payable when invoiced to the lot owners. The amount so paid by the lot owners shall be administered by the Owner/Developer, and thereafter by the Association when formed, and may be used for the functions hereinafter set forth, and it is expressly stipulated that the Owner/Developer or the Association has the power to perform any and all said functions but that they are under no duty to perform or discontinue to perform at any time any of the functions, to-wit:

- a. For the payment of the necessary expenses for the operation of said Association; and,
- b. For improving, cleaning and maintaining the common areas in the subdivision including any retention ponds which may be deeded by the Owner/Developer to aforementioned Association; and,
- c. For the maintenance and improvement of any recreational facilities constructed by the Owner/Developer; and,
- d. For caring for vacant and unattended land, if any, within the subdivision, removing grass and weeds therefrom and doing any other thing necessary and desirable in the opinion of the Owner/Developer, or the Officers of the Association, for keeping such property neat and in good order for the general benefit of the property owners in said subdivision; and,
- e. For payment of expenses incidental to maintaining street lights, any entrance lighting and subdivision signs; and,
- f. For any expense incident to the enforcement of these protective covenants and restrictions; and,
- g. For such other purposes as in the opinion of the Owner/Developer, or the Officers of the Association, may be necessary for the general benefit of the property owners in the subdivision including, but not limited to, procurance of a Premises

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Liability Insurance policy for the common areas and recreational areas of the subdivision.

10.4. The annual and special assessments referred to hereinabove shall constitute a lien upon all lots or portion of lots owned in the subdivision. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the legal rate of interest provided by the Statute Laws of the State of South Carolina on Judgments. The acceptance hereafter of a deed by a Grantee to a lot in the subdivision shall be construed to be a covenant by the Grantee to abide by the provisions hereof and to pay said assessments, which assessments shall run with the land and be binding upon said Grantee, the Grantee's successors, heirs and assigns, forever. No person or entity may waive or otherwise escape liability for such assessments hereunder by virtue of alleged non-use of the common areas and facilities of the Association or abandonment of property in the subdivision.

10.5. Once established and when operated by the lot owners in the subdivision, the Association shall have the right to suspend the voting rights and right to use the common areas and recreational facilities of a lot owner for any period in which any assessment on such lot owner's property remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations. In addition, the Association shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by this instrument. In the event of non-payment of any assessment as set forth herein by any lot owner in the subdivision the Association may bring an action at law for judgment against the owner of such lot personally obligated to pay the same and/or foreclose a lien against such lot in the same manner that a real estate mortgage is foreclosed, and interest, costs and reasonable attorney's fees shall be added to the amount of such assessment to be collected from such lot owner. Until such Association is formed, the Owner/Developer shall have the rights reserved unto the Association as aforesaid. The lien of the Owner/Developer, or Association when formed, against a lot in the subdivision must be established by, and shall be effective from the time of filing of a Notice of Lis Pendens in the RMC Office for Pickens County. Failure by the Owner/Developer, the Association, or any lot owner, to enforce any covenant or restriction or lien herein contained shall in no event be deemed a waiver of the right to do so.

10.6. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or lien of any laborers, contractors, or materialmen furnishing labor and materials in connection with the construction of improvements located on any lot in the subdivision, unless prior to the filing thereof a Notice of Lis Pendens has been filed by the

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Owner/Developer or Association for foreclosure due to non-payment of such assessments. Sale or transfer of any lot shall not affect the assessment lien; however, the sale or transfer of any lot pursuant to foreclosure of a mortgage or materialmen's or mechanic's lien or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer unless prior to commencement of said action a Notice of Lis Pendens had been filed by the Owner/Developer or Association to enforce the collection of any assessment charges that shall become payable after the acquisition of title by a subsequent bonafide purchaser for value.

10.7. The annual or special assessments provided herein to be levied by the Owner/Developer, or the Association when formed, shall not apply to any lot so long as it is wholly owned or partially owned by Mossie Smith Development, Inc. Further, in this regard, in the event a lot in the subdivision is sold to a licensed builder for construction of a dwelling for resale thereby, then, in such event, such builder shall have a grace period during such builder's ownership, up to one (1) year after such builder's execution of a contract to purchase such lot from the Owner/Developer, before being required to commence payment of such assessments.

10.8. As used herein, the term Owner/Developer shall mean Mossie Smith Development, Inc., its successors or assigns.

10.9. The agent or employees of the Owner/Developer, or the Association when formed, shall be hereby authorized to enter upon any lot for the carrying out of any function set forth above.

10.10. The Owner/Developer specifically reserves the right to have access to and make use of any and all common areas and recreational areas and facilities of the subdivision, to include club house, swimming pool and tennis courts, so long as the Owner/Developer continues to own lots in Westchester Subdivision and to extend the right to make use thereof to prospective purchasers of lots in said subdivision from said Owner/Developer.

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