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GEORGE E. TATUM
REGISTER OF DEEDS
CUMBERLAND CO., N.C.
(44)

PREPARED BY AND RETURN TO WILLIAM E. CLARK, P.O. BOX 786, FAYETTEVILLE, NC 28302
NORTH CAROLINA

CUMBERLAND COUNTY

DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made October 29, 1996, by WILLIAM E. CLARK hereinafter referred to as "Declarant,"

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Fayetteville, Cumberland County, North Carolina, which is more particularly described as:

WESTSHORE PARK, PHASE I, as recorded in Plat Book 93, Page 1 of the Cumberland Public Registry.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Westshore Park Homeowner's Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all property owned by the Association for the common use and enjoyment of the owners. Declarant reserves the right to declare certain properties of Declarant as shown on Plat Book 74, Page 86 as common area or areas.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to William E. Clark, his successors, assigns or heirs, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot and shall be preserved to the perpetual benefit of the owners Association, subject to the following provisions:

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(a) the right of the Association to suspend the voting rights of an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules.

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(c) the right of the Association to impose rules for the use and enjoyment of the Common Area and improvements thereon, which rules may further restrict the use of the Common Area.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all owners of attached units with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The Vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to a Class A membership upon the happening of either of the following events, which ever occurs earlier:

(a) When the total aggregate votes outstanding of Class A Membership equals the total votes outstanding in the Class B Membership subject to a declaration by Declarant that dedication of all the lots for Westshore Park have been made; or

(b) on January 1, 2005.

ARTICLE IV COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments or charges, and
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

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The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreating, health, safety, and welfare of the residents in the properties and for the improvements and maintenance of the Common Area, including, but not limited to maintenance of the fences, private drives, including the maintenance and upkeep of all private streets and roadways within the properties, which are not the responsibility of the City of Fayetteville, exterior lighting, brick walkways, irrigation systems, gutters, individual landscape maintenance and exterior painting and roofing. *in Common areas*

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to the Owner, the annual maximum assessment shall be \$1,800.00 per lot. *of Woods*

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual maximum assessment may be increased each year not more than five (5%) percent above the assessment of the previous year without a vote of the membership. *planning*

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual maximum assessment may be increased above five (5%) percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose. *again*

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum. *of exterior*

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of public and private capital improvement upon the Common Area or as required in accordance with the purpose of the assessments as set forth in Section 2 above, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at the meeting duly called for this purpose. *wooden fascia*

Section 5. Taxes. As an additional annual assessment, the Association shall levy against the Owners equally an amount sufficient to pay the annual cost of liability insurance premiums for such insurance on the Common Area and the amount of ad valorem property taxes and/or special assessments levied by any lawful governmental authority on the Common Area. It shall be the duty of the Association to pay all such premiums and taxes promptly when they shall become due. Upon default by the owners Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the common areas or assessments for public improvements to the common areas, which default shall continue for a period of six (6) months, each owner of a building site in the development shall become personally obligated to pay to the tax assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes and/or assessments due by the total number of building sites in the development. If such sum is not paid by the owner within thirty (30) following the receipt of notice of the amount due, then such sum shall become a continuing lien on the building site of the then owner, his heirs, devisee, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law against the owner personally obligated to pay the same or may elect to foreclose the lien against the property of the owner. *trim*
addition
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Section 6. Notice and Quorum for any Action Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum and the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and collected on an annual basis.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The written assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against such 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 subject thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro-rata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. At the time prescribed for payment of annual dues, members shall be required to submit proof of insurance coverage in amount and form acceptable to the Board of Directors.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six (6%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or form the lien thereof.

Section 11. Ownership, Maintenance and Repair of Private Streets. All private streets and roadways are pursuant to the provisions of Section 27-11 of the Fayetteville City Code are the financial responsibility of the homeowners association.

ARTICLE V ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee

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composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Notwithstanding the above the powers delineated under this paragraph shall vest in the Declarant until Declarant has filed a notice of completion of declared lots for Westshore Park or January 1, 2005.

ARTICLE VI PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the attached homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII COMMON DRIVES

Section 1. Joint Use of Driveways. Driveways across one lot that can also serve an adjacent lot are for the joint use and benefit of the property owners that benefit from the use of such a driveway to his lot.

Section 1. Removal of Vehicles. Any Owner completely blocked from access or egress to or from his unit from either direction may have any vehicle or vehicles removed from the common drive as required to gain such access or egress and the owner or owners of such vehicle or vehicles will be liable for any towing and/or storage charges resulting from such removal; and any owner may cause to have removed from the common drive any vehicle which is parked within the confines of the common drive for a period of more than 14 continuous

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hours or a total of 24 hours in a 72 hour period and the owner of such vehicle will be liable for any towing and/or storage charge resulting from such removal.

ARTICLE VIII EXTERIOR MAINTENANCE

* The Association shall provide maintenance for the painting, repairing, replacing and caring of roofs, gutters, downspout, exterior building surfaces, drives, storm drainage systems, irrigation systems, landscaping, exterior lighting, perimeter wall and perimeter fencing. The cost of such maintenance, repairs and replacements shall be paid for out of the assessments provided for in Article IV above.

* See Amendment

ARTICLE IX USE RESTRICTIONS

Section 1. Land Use and Building Type.

No Lot shall be used except for residential purposes. Any building erected, altered, placed or permitted to remain on any Lot shall be subject to the provisions of Article V of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

Section 2. Nuisances.

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Temporary Structures.

No structure of a temporary character, trailer, basement, tent shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.

Section 4. Recreational Vehicles.

No boat, motor boat, camper, trailer, motor or mobile-home, shall be permitted to remain on any Lot unenclosed outside of the garage at any time, unless by consent of the Association in which event such vehicles shall be placed in the area or areas designated by the Association.

Section 5. Animals.

The maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within any Lot or upon the common area, except that the keeping of not more than two (2) orderly domestic pets (dogs or cats) shall be permitted subject to rules adopted by the Board of Directors; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon ten (10) days written notice from the Board of Directors. Such pets shall not be permitted upon the common area unless accompanied by an adult and unless carried or leashed. All pets shall be registered with the Board of Directors and shall otherwise be registered and inoculated as required by law.

Section 6. Outside Antennas.

No outside radio or television antennas shall be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 7. Exterior Lights and Draperies.

In order to preserve a harmonious presentation of the exterior of the units, only clear, white non-frost or smoked exterior lights may be utilized and all draperies covering windows which are visible from the exterior of the units shall be lined with white or some other neutral color.

Section 8. Minimum Value of Dwellings.

No dwelling shall be erected or allowed to remain on any of the said "Lots" which shall have a market value at time of erection of less than \$150,000 or contain a heated-area, living space of less than 2000 square feet, or of which not less than 1000 square feet shall be on

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the first or ground floor. Heated-area living space shall mean the ordinary living space in a house which is designed and constructed so as to be capable of being heated for regular living use in cold weather. In the computation of floor space, furnace room areas, garages, and porches shall not be counted.

Section 9. Fences. No fences other than the fences constructed by the Declarant and maintained by the Association shall be erected upon the Properties unless approved in writing by the Architectural Committee.

Section 10. Junk Vehicles. No automobile or motor vehicle may be dismantled on said property. No mechanically defective automobile or currently unlicensed automobile shall be placed or allowed to remain on said property.

Section 11. Removal of Non-complying Structures. The Declarant shall have the right, but no obligation, to remove or require the removal of any fence, wall, hedge, shrub, bush, tree or other thing, natural or artificial, placed or located on any building plot, if the location of the same will, in the sole judgment and opinion of the Declarant, obstruct the vision of a motorist upon any of the access way or any owner's view of the golf course.

ARTICLE X EASEMENTS

Section 1. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage, or which may obstruct or retard the flow of water.

Section 2. The Association acting through its officers, agents, servants, and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance called for in Article VIII of this Declaration.

Section 3. Easements are also reserved over those portions of the Common Area that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the Common Area on the air and light space above such Common Area.

ARTICLE XI MISCELLANEOUS

Section 1. No sign or signs other than Declarant's "For Sale" or "For Rent" sign shall be displayed on the property.

Section 2. Nothing contained in these Covenants and Restrictions shall prevent the Declarant or any person designated by the Declarant from erecting or maintaining such commercial and display signs and such temporary dwellings, model house and other structures as the Declarant may deem advisable for development purposes.

Section 3. In the event of fire damage to any existing living unit the damage must be repaired immediately. If the living unit is totally destroyed or partially destroyed, the appropriate repair or replacement must be done within one (1) year from the damage. The living unit must be rebuilt to the previous style, size, design and at least comparable market value.

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ARTICLE XII ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Declarant. Declarant reserves the right to annex additional lands as a part of the residential development of WESTSHORE PARK. The area subject to annexation is the area shown on Plat Book 74, Page 86.

Section 2. Annexation by Owners. Once Declarant has filed a notice of completion of declared lots for Westshore Park annexation of additional property shall require the assent of two-thirds (2/3) of Class A votes at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence of members or of proxies entitled to cast sixty (60%) percent of the votes of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at each subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

ARTICLE XIII INCORPORATION OF APPLICABLE ORDINANCE

Section 1. Zero Lot Line Development. It is the intent of the Developer that some or all of the Properties described herein may be developed as a zero lot line development. The applicable provisions of the Fayetteville City Code are incorporated herein by reference.

Section 2. Conflicting Provisions. To the extent the provisions of this Declaration conflict with any applicable provisions of the Fayetteville City Code or North Carolina General Statute, the conflicting provisions of the City Code and/or North Carolina General Statute shall control.

ARTICLE XIV GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by an proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.


Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot

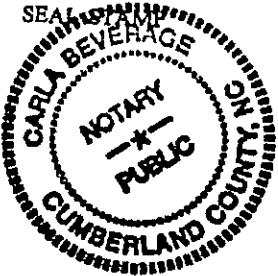
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Owners, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded.

IN WITNESS WHEREOF, William E. Clark, the Declarant herein, has hereby executed this declaration of restrictive covenants.



William E. Clark (SEAL)



NORTH CAROLINA, Cumberland County.

I, a Notary Public of the County and State aforesaid, certify that William E. Clark, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 29th day of October, 1996.

My commission expires: 9-29-97 Carla Beverage Notary Public

The foregoing Certificate(s) of Carla Beverage

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

By George E. Tatum REGISTER OF DEEDS FOR CUMBERLAND COUNTY,
Cheryl C. Hudson Deputy/Assistant - Register of Deeds