

FILED, RECORDED, INDEXED  
10/17/2006 04:28:32 PM  
REC. FEE: 17.00 CD FEE:  
STATE FEE: .00 TOTAL FEES: 1  
PAGES: 11  
WICKI M. MCCARTHY - REGISTER OF DEEDS  
SUMTER COUNTY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SUMTER )

**THIRD AMENDED  
RESTRICTIVE COVENANTS**

THESE RESTRICTIVE COVENANTS made on the date hereinafter set forth by Landmark Pointe Development Co., LLC., hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Sumter County, State of South Carolina, which is more particularly described as follows:

All that certain piece, parcel and tract of land situate, lying and being in the City and County of Sumter, State of South Carolina described in Schedule A, attached hereto and incorporated herein by this reference.

WHEREAS, Declarant previously subdivided a portion of the the subject property as Phase 1 by Plats recorded in Plat Book 2002 at page 304 and Plat Book 2002 at page 305, as amended by Plats recorded in Plat Book 2002 at page 330 and Plat Book 2002 at page 331, as further amended by a Plat recorded in Plat Book 2002 at page 354 in the Office of the Register of Deeds for Sumter County;

WHEREAS, Declarant has now further subdivided the subject property by designating a Phase 2, which subdivision is shown on a plat recorded in Plat Book 2004 at page 321, as revised by Plat recorded in Plat Book 2004 at page 392 (all of the aforesaid plats are hereinafter referred to as the "Plat"), and the lots as shown on such plat are hereby made subject to these Second Amended Restrictive Covenants;

WHEREAS, Declarant has previously filed Restrictive Covenants in the Register of Deeds for Sumter County in Volume 846 at page 579, Amended Restrictive Covenant in Volume 846 at page 1321, and Second Amended Restrictive Covenants in Volume 948 at page 1509 with respect to such property, but desires to further amend such Restrictive Covenants as provided in Article II of such Restrictive Covenants;

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 Landmark Pointe Homeowners Association, its successors and assigns.

Section 2. "Declarant" shall mean and refer to Landmark Pointe Development Co., LLC., its successors and assigns.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as Declarant may hereafter make subject to this Declaration.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 5. "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 Landmark Pointe, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

## **ARTICLE II RIGHT TO ALTER OR AMEND**

The Declarant reserves the right and power, for so long as Declarant owns any interest in the Properties or any Lot, to alter, amend, or add to the Restrictive Covenants as set forth herein, in any respect as the Declarant may determine, in its sole discretion which shall not be subject to review, is in the best interests of the Properties and the Owners. The Declarant further reserves the right, for so long as Declarant owns any interest in the Properties, to add property to Landmark Pointe and make such property subject to these Restrictive Covenants, or to remove any portion of the Properties owned by Declarant at such time from these Restrictive Covenants and rights, duties and restrictions set forth herein. At such time as Declarant has sold all the lots and has no other interest in the Properties, these Restrictive Covenants may be amended only upon the vote of seventy-five (75%) percent of the Owners; provided that each Lot shall be entitled to only one (1) vote, and if a Lot is owned by more than one person or entity, the vote for such lot shall be by a majority of the owners of such Lot.

## **ARTICLE III ARCHITECTURAL CONTROL**

No building, fence, wall, swimming pool, landscaping or other structure shall be commenced, erected or maintained upon any lot or 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 Architectural Review Committee composed of not less than two (2) members who shall be appointed and determined by the Declarant until all lots have been sold in said Subdivision and any additions or annexations thereto. After the sale of all lots in said Subdivision and any additions or annexations thereto, the membership of the Architectural Review Committee shall be elected by the Homeowners Association. In the event said Architectural Review committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will be deemed to have been denied.

#### **ARTICLE IV GENERAL PROVISIONS**

The following provisions are applicable to all Owners and all Lots within Landmark Pointe:

1) No lot shall be used except for single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family residential dwelling or one two-family residential townhouse not to exceed two (2) stories in height, and other out buildings incidental to the residential use of the lots, provided that all accessory buildings must have the same roof covering as the residential dwelling. Each unit of the townhouse must contain at least 1,000 square feet of floor space, exclusive of basements, porches, garage or carport. The Architectural Review Committee shall have the discretion, but shall not be required, to grant variances not to exceed 10% of the above stated minimum square footage requirement.

2) No building, fence, landscaping or other structure or improvement of any kind shall be begun, erected or placed on any of the lots subjected to these covenants until the building plans, specifications, design and plat plan showing the location of such building, fence or structure on the lot in question has first been approved by the Architectural Review Committee in writing as to the conformity and size, type and quality, and as to the harmony of design, and as to the location of the building, fence or structure with respects to topography and finished grade elevation. In addition, each Lot Owner shall construct a concrete sidewalk, beginning four (4) feet from the concrete curbing of the street on which such Lot is situate, and being four (4) feet wide, and placed such that the sidewalk lines up evenly with existing and future sidewalks on lots adjoining the subject lot. Each lot must have a concrete driveway, beginning at the concrete curbing of the street on which such Lot is situate. No sidewalk or driveway shall be constructed with any material other than concrete. The purpose of these restrictions is to provide a harmonious presentation of all Lots in the Subdivision. Each sidewalk or driveway must be approved by the Architectural Review Committee as to location and materials prior to preparing and pouring the sidewalk or driveway to ensure compliance with the requirements of this paragraph.

3) No building or other structures shall be located on any lot nearer than 25 feet from the front property line, nearer than 20 feet from the rear property line, nor nearer than 8 feet from

the side property line; provided that a building or structure may be located 5 feet from a side line if the building or structure on the immediately adjoining lot is located 8 feet from the side property line. For the purpose of this covenant, eaves, steps and other open porches shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of a building, or a lot, to encroach upon another lot.

4) No lot may be added to, subdivided or reduced in size from that which is shown on the hereinabove recorded subdivision plat unless approved in writing by the Architectural Review Committee; provided, however, that any lot as originally platted under the plats referenced above may be subdivided once into an A and B subplot without the written approval of the Architectural Review Committee, and all such lot subdivisions that have occurred prior to the effective date hereof are hereby ratified and approved.

5) In the event that there is a dispute between Owners whose residential structures include a shared or common wall over the maintenance of the outside portion of structures (e.g. whether the roof needs to be replaced or the structure needs to be repainted) and landscaping of the Lots upon which such structures are situate, such disputes shall be submitted to the Architectural Review Committee for review and determination. The determination of such dispute by the Architectural Review Committee shall be binding on each affected Owner, and shall not be subject to review by any court.

6) No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be, or become, an annoyance or a nuisance to the neighborhood.

7) No concrete fence or concrete block fence shall be allowed on any lot whatsoever. No wire or chain link fence shall be placed on any lot unless first approved in writing by the Developer. Dog pens may be placed on a lot only with the prior approval of the Architectural Review Committee.

8) No Satellite dish exceeding 30 inches in diameter shall be placed upon any lot, and the placement of any satellite dish must be approved by the Architectural Review Committee prior to installation.

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

10) No livestock, poultry, or other animals shall be kept on any lot except for household pets which are not used or bred for commercial purposes and which do not constitute a nuisance or annoyance to the neighborhood.

11) No signs of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used

by a builder to advertise the property during the construction of any lot for sale, and/or one appropriate sign indicating the name of the owner or resident of the subject lot and the number and name of the street. No signs may be attached to any trees and any such signs hereinabove referred, must be approved in advance by the Architectural Review Committee.

12) No garbage nor domestic trash shall be disposed of by burying on any lot and no lot shall be used as a dumping ground for rubbish. Trash, garbage, or other waste material shall be kept in a sanitary covered container behind the residences and out of sight of the street. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

13) No individual well for drinking water or sewage disposal system shall be permitted on any lot unless such system is allowed, designed, located and constructed in accordance with requirements, standards and recommendations of the South Carolina Department of Health and Environmental Control. Approval of such system must be obtained from such authority before any use may be made thereof.

14) Any approval or disapproval as required in these covenants shall be in writing and signed by the appropriate officer, agent or designee of Declarant. In the event the Architectural Review Committee appointed by Declarant, or the designated representative thereof, fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, then such plans or specifications shall be deemed to have been disapproved.

15) Enforcement shall be by proceedings at law or in equity against any person or persons violating, or attempting to violate, any covenant contained herein, and may be brought either to restrain violation, or to recover damages.

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

17) All boats, trash cans, garbage receptacles, motor homes, recreational vehicles, trailers or trailer hitches and similar propelled and non self-propelled vehicles shall be parked or stored in the rear of the dwelling on any lot where possible and out of sight from the street so as not to detract from the appearance of the subdivision.

18) No inoperative vehicles are permitted on said lots in excess of thirty (30) days.

19) All structures on any lot shall be completed within nine (9) months from the date of ground breaking, or commencement of construction whichever occurs first, unless the time is otherwise extended by the Declarant, its successors or assigns, or by its designated representative, the Architectural Review Committee.

20) Each Owner must spend at least \$1,000 on landscaping for each Lot owned by such Owner. Part of the landscaping cost shall include the red maple tree(s) required by

Paragraph 5 hereof. All landscaping and decorations facing the road on which a Lot is located shall be approved by the Declarant or its designated Architectural Review Committee.

21) No Owner or any other person shall disturb or in any manner change the character of the "wetlands buffer" on Common Areas A, B, or C as shown on the plat of Phase 2 recorded in the Office of the Register of Deeds for Sumter County in Plat Book 2004 at page 321.

22) No mobile homes, trailers, or similar type housing units shall be permitted in the Subdivision on any lot hereinabove referred. Determination of what constitutes any of the above type of homes shall be made by the Architectural Review Committee and is final.

23) The Declarant reserves the right to subject the real property, hereinabove described, in this subdivision to a contract with the Electric utility serving said Subdivision for the installation of underground electric cables or above ground poles and wires.

24) The Declarant, or any lot 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 of any Owner to enforce any covenant or restriction herein contained shall in no event to be deemed a waiver of the right to do so thereafter.

25) Neither Declarant nor any member of the Architectural Review Committee shall be responsible or liable in any way for any defects in any plans or specifications submitted and approved by the Architectural Review Committee or Declarant, nor for any structural defects in any work done according to such plans of specifications. Further, neither Declarant nor any member of the Architectural Review Committee shall be liable in damages to anyone submitting plans or specifications for approval under these restrictions or to any owner of property affected by this declaration by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval, or failure to approve or disapprove of any such plans or specifications. Every person who submits plans or specifications to the Architectural Review Committee agrees by submission of such plans or specifications, and every lot owner agrees that he/she/it will not bring any action or suit against the Declarant or any member of the Architectural Review Committee to recover any such damages.

26) Invalidation 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.

27) The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

**ARTICLE IV  
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every owner of a Lot shall be a member of the association, except that multiple owners of a single lot shall be considered a single owner. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

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

Class A. The Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to two votes for each Lot owned, provided however, that if a Lot as originally platted has been subdivided into an A and B lot, the Owners of the A and B lots are entitled to one vote each. When more than one person holds an interest in any Lot or subdivided Lot, all such persons shall be members. The votes for such Lot shall be exercised as the Owners of such Lot shall determine, but in no event shall more than two votes be cast with respect to any Lot. At any meeting of the Homeowners Association a quorum of not less than Owners, present in person or by proxy, holding forty (40%) percent of votes entitled to be cast at the meeting shall be required to conduct business. For purposes of the preceding paragraph the number of votes entitled to be cast at any meeting shall equal 257. Proxies will be permitted provided they are in writing and attested before a notary public and said proxy has been delivered to the Secretary of the Board of Directors of the Association at least twenty-four (24) hours before any regular or special scheduled meeting of said Association. Any such proxies filed with the Secretary shall be open for public inspection and shall be retained in the files of said Homeowners Association and attached to and become a part of the minutes of that meeting.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to eight (8) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, or
- (b) ten (10) years from the date of these Covenants.

Any officer of the Declarant, or any agent with written authorization from Declarant shall be permitted to attend and cast all votes in behalf of the Declarant at any regular or special meeting of the Landmark Pointe Homeowners Association.

Section 4. The Association shall be governed by a Board of Directors of not than three (3) nor more than eight (8) members elected by a majority of the members of the Association. The Board of Directors will elect a secretary from its membership. All Board members shall serve without compensation except the Secretary who shall be compensated as determined by the Board of Directors. A quorum of the Board necessary to conduct business shall consist of at least a majority of the Board members.

Section 5. Notice must be given by ordinary mail to all lot owners in writing at least seven (7) days prior to any regular or special meeting of the Association. The Secretary shall maintain a roster of all lot owners and their addresses for the furnishing of notice hereunder. It shall be the responsibility of the lot owner to notify the Secretary of any change in their mailing address. Notice given by the Secretary to the last known address furnished by the Sumter County Tax Assessors Office shall constitute compliance with this section as sufficient notice.

## **ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Assessments. The Association may levy assessments against the Lots; provided such assessments shall be used exclusively to promote the recreation, health, safety, and welfare of the Lot Owners and for the improvement and maintenance of the Common Areas, including, but not limited to, street lights, signs, landscaping and maintenance of the subdivision entrances.

Section 2. 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 fifteen (15.0%) percent per annum. If any such sum shall not be paid when due, the Association shall have the right upon not less than fifteen (15) days notice to the lot owner to collect such sum by suit at law, and all other legal means, and to add to such sum and collect reasonable attorney's fees, and all other costs and expenses incurred by the Association in connection with the collection therewith. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his/her/its lot.

Section 3. Maximum Annual Assessment. Except for special assessments as set forth in Section 4 hereof, the maximum annual assessment for an undivided Lot as originally platted shall be One Hundred Dollars (\$100.00) per lot, and for each Lot subdivided into an A and B subplot shall be Fifty (\$50.00) per subplot.

(a) The annual assessment may be increased each year not more than 5% above the actual expenses incurred for the previous year without a vote of the membership. Expenses shall include the improvements, maintenance, and upkeep of the common areas as well as the costs of notice, meetings and administration of the Homeowners Association.

(b) The maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3rds) of all members who are voting in person or by proxy, at a duly called meeting for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, except as provided in section (b) above.



Section 4. Special Assessments for Capital Improvements and Common Area Maintenance. The Association shall maintain the Common Areas as shown on the plat of Phase 2 recorded in the Office of the Register of Deeds for Sumter County in Plat Book 2004 at page 321. 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 costs of construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, provided that any such assessment shall have the assent of a majority of the votes of all members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting shall be sent by ordinary mail to all lot owners at least seven (7) days prior to called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than seven (7) days nor more than thirty (30) days in advance of the meeting. At such called meeting, the presence of members, or proxies, entitled to cast fifty (50%) percent of all votes of the membership shall constitute a quorum. Business may not be conducted without a quorum present.

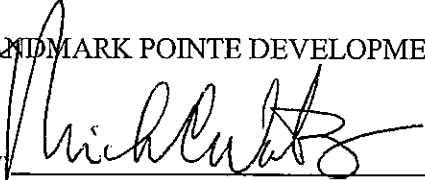
Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. and may be collected on a monthly or annual basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual 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 each lot of 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. 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. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 12<sup>th</sup> day of October, 2006.

LANDMARK POINTE DEVELOPMENT CO., LLC

By

  
Michael C. Watson, Manager

  
Witness

  
Melissa A. Hansen

Witness

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SUMTER )

**PROBATE**

PERSONALLY appeared the undersigned witness who being put to oath says that he/she saw the within named Landmark Pointe Development Co., LLC., by Richard M. Knowlton, Jr., its Manager, sign, execute and deliver the within written Restrictive Covenants, and that he/she with the other witness, witnessed the same.

Melissa A. Haamsen

SWORN to before me this  
12<sup>th</sup> day of October, 2006

Todd W.  
Notary Public for South Carolina  
My Commission Expires: 4/19/2012

SCHEDULE A  
to Restrictive Covenants

All that certain piece, parcel or tract of land, lying, being and situate in the, County of Sumter, State of South Carolina, designated as Tract No. 2 (48.68) acres of land shown on plat of Joseph R. Edwards, P.L.S., dated July 26, 2001, and recorded with the Register of Deeds for Sumter County in Plat Book 2001 at Page 559. Pursuant to Section 30-5-250 of the Code of Laws of South Carolina, (1976, as amended), reference to said plat is hereby made for the metes, bounds, courses and/or distances of the property delineated thereon

This being the same property conveyed to Landmark Pointe Development Co., LLC, by deed of Sumter West, LLC dated August 30, 2001 and recorded in the Office of the Register of Deeds for Sumter County on August 30, 2001 in Volume 814 at page 1383.