

SOUTH ENGLAND POINT

USE RESTRICTIONS

ARTICLE ONE

DEFINITIONS

Section 1.1. "LAND" shall mean the real property described on Exhibit "A", and any other real property made subject to the Covenants and Restrictions by WDI pursuant to ARTICLE ELEVEN and all the improvements erected on the Land.

Section 1.2. "ESTATES" shall mean a portion of the Land consisting either of a lot or contiguous lots (or portions thereof if prior approval is given by WDI pursuant to Section 3.7 hereof), but exclusive of public or private roads.

Section 1.3. "BUILDING AREA" shall mean that area of an Estate so designated by the Design Review Board (hereinafter referenced) within which designated area all primary and accessory above grade Improvements (hereinafter defined), shall be located unless otherwise permitted in writing by the Design Review Board.

Section 1.4. "THE ASSOCIATION" shall mean South England Point Association, Inc., a Virginia non-profit, non-stock corporation.

Section 1.5. "IMPROVEMENT OR IMPROVEMENTS" shall mean structures and construction of any kind, whether above, on, or below an Estate's surface, such as, but not limited to, buildings, outbuildings, antennas, communication dishes, heating and air conditioning units, flag poles, water lines, sewer lines, electrical and gas distribution facilities, loading areas, parking areas, walkways, walls, fences, screens, hedges, plantings, signs, curbs, gutters, paved surfaces, lighting systems, irrigation systems, traffic control devices and systems, water dependent

structures, swimming pools, tennis courts, tree houses, play structures, or similar structures and construction.

Section 1.6. "OWNER OR OWNERS" shall mean the person(s), sole proprietorship(s), partnership(s), limited partnership(s), corporation(s), trust(s) or other legal entities in whom title to an Estate is vested as shown by the official records in the office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City, Virginia, and their lessee(s), licensee(s), employee(s) and all of their successors.

Section 1.7. "PROPERTY LINE" shall mean a line bounding an Estate.

Section 1.8. "RIGHT-OF-WAY LINE" shall mean a line bounding either a public or private street. The term "right-of-way" as used in these covenants and restrictions shall not include access which is solely within an Estate.

Section 1.9. "MORTGAGE" shall mean any mortgage, deed of trust, financing statement or similar instrument encumbering any Estate as security for any loan.

Section 1.10. "COVENANTS AND RESTRICTIONS" shall mean this Declaration of Covenants and Restrictions and any amendments thereto.

ARTICLE TWO

GENERAL CHARACTER AND PURPOSES

The Land is subjected to these Covenants and Restrictions in recognition of the Land's environmental and historic features and sensitive location and to ensure a unified, managed development,

distinguished by visual quality and sensitivity to the natural and historic setting and to promote beneficial single family residential development by specifying the most appropriate development of each Estate. It is the intent of these Covenants and Restrictions to ensure that the Estates be maintained as an attractive setting for single family residential use with ample landscaped and natural areas, attractive high quality structures, and appropriate development of the Estates, to ensure a sense of continuity in aesthetic values; to protect the Owners of the Estates against improper and undesirable use of surrounding Estates; to protect adjacent property owned by The Foundation including, but not limited to, the Carter's Grove Country Road, from visual intrusions, light or noise; to prevent Improvements built of improper or unsuitable materials or design; to encourage the erection of attractive Improvements with appropriate locations; and to prevent haphazard and/or inharmonious development of the Estates.

ARTICLE THREE

GENERAL CONDITIONS

Section 3.1. "USES". Each Estate shall be used solely for one single family residence and appropriate accessory uses that are necessary and directly related to the single family residence. Such accessory uses include but are not limited to guest quarters and a caretaker's residence and the keeping of household pets. All such uses shall not be contrary to these Covenants and Restrictions or in violation of any laws of the United States, the statutes of

Virginia, or applicable ordinances of James City County, Virginia.

Section 3.2. "REVIEW AND APPROVAL".

A. GENERAL. Prior to any Improvement of any kind being installed, erected, placed, assembled, altered or permitted to remain on any Estate, the plans and specifications for the Improvement, showing the nature, shape, size, color, architectural design, material, location and landscaping, paving, existing and proposed utility plans, lighting plans, and storm drainage shall be first approved in writing by the Design Review Board hereinafter referenced. No application for any building permit shall be made without first receiving such approval.

WDI desires to provide an aesthetically pleasing but naturally harmonious setting on each Estate for residential and appropriate accessory uses; however, both WDI and the Foundation and each of them desire to protect the scenic and historical values of the Carter's Grove Country Road. Accordingly, unless specifically approved in advance in writing by both WDI and the Foundation by specific reference to this section, no Improvements of any type shall be located on any Estate if the Improvement, after construction, is readily visible at any time of year from the Carter's Grove Country Road or such Improvement produces noise, odors, glare or other emissions which may be readily detected from the Carter's Grove Country Road. The Design Review Board, hereinafter referenced shall, in its sole and absolute discretion, determine whether an Improvement or its impact is readily visible or readily detected from the Carter's Grove Country Road. To the

extent not inconsistent with the intent of these Covenants and Restrictions, WDI shall endeavor to permit Improvements on each Estate which maximize the aesthetics for that Estate while protecting the scenic and historical values of the Carter's Grove Country Road.

B. DESIGN REVIEW PROCESS

(1) Design Review Board

In order to achieve the overall design and environmental objectives set forth in these Covenants and Restrictions, all plans for building and site design shall be reviewed by a Design Review Board (DRB), whose purpose will be to evaluate all proposals for development on Estates for adherence to these Covenants and Restrictions. Proposals will be evaluated for their aesthetic standards, sympathy with the natural environment, protection of the Carter's Grove Country Road and compatibility with other development on the Land.

The membership and by-laws of the DRB shall be determined by WDI. The criteria and controls described herein provide a conceptual framework for the DRB and applicants to follow in evolving a design for each Building Site(s) that shall be consistent with the architectural and environmental quality envisioned for South England Point.

All applicable local, state and/or federal regulations shall take precedence in cases where they are more restrictive than the criteria set forth herein. The submission to, and approval of the plans by the DRB shall be in addition to any permits or approval

required by any local, state or federal laws or regulations.

(2) Design Review Procedures

The Design Review Procedures shall be established in writing by the DRB and provide for requirements and procedures for a Pre-Design Conference, Preliminary Plan Approval and Final Plan Approval. In addition, the Design Review Procedures shall set forth in writing Building Construction Guidelines. The DRB may change the Design Review Procedures from time to time provided such changes shall be in conformity with these Covenants and Restrictions. Within thirty (30) days prior to the Owner's request for a Pre-Design Conference (time being of the essence), the Owner shall obtain from the DRB a copy of the Design Review Procedures then in effect, which document shall become a part of these Covenants and Restrictions and be fully enforceable in accordance with the provisions hereof.

Neither WDI nor the DRB, shall be liable to anyone submitting an application for approval or to any Owner for negligence, misfeasance or non-feasance arising out of or in connection with the approval or disapproval or failure to act on such application.

Notwithstanding anything to the contrary, after the expiration of one hundred fifty (150) days from the date of the filing by the Owner with the DRB of a copy of a permanent occupancy certificate issued by the appropriate governmental body having jurisdiction over the Improvements, said Improvements shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all provisions of these Covenants and

Restrictions, unless actual notice of such noncompliance executed by the DRB shall appear of record in the office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City or unless legal proceedings shall have been instituted to enforce compliance.

Section 3.3. "CLEARING OUTSIDE OF BUILDING AREA"

Unless specifically approved in writing by the DRB, all areas on any Estate outside of the Building Area shall be left in their natural state; however, the DRB shall permit clearing for driveways and utilities and, subject to the provisions of Section 3.2(A), may permit selective clearing and pruning for water views and water dependant Improvements. The provisions of this Section shall not require DRB approval for the removal of hazardous trees on any part of any Estate or for the removal of dead trees and/or invasive vegetation between the Building Area and the Right-of-Way Line.

Section 3.4. "HEIGHT LIMITATIONS". All portions of any Improvements constructed above grade on any portion of any Estate shall not exceed thirty five (35) feet in height.

Exceptions to these limitations may be granted only by the DRB provided that any exception is based upon a finding by the DRB in its sole absolute discretion that the proposed Improvement, after construction:

- A. does not materially and adversely affect other Estates within South England Point.
- B. will not be readily visible from the Carter's Grove Country Road during any season of the year

Section 3.5. "UNDEVELOPABLE AREAS". There shall be no construction of any sort inside the undevelopable area identified on Exhibit A except for stormwater management facilities and water dependent Improvements approved by the DRB and constructed pursuant to uniform standards established by the DRB. Neither trees nor understory plant material shall be removed within the undevelopable area, nor shall additional plant material be planted therein except upon the prior written approval of the DRB.

Section 3.6. "ADVERTISING PROHIBITION". No billboards, or other advertising devices of any character, temporary or permanent, shall be erected, pasted, posted, painted, displayed or permitted upon any part of any Estate, or structure thereon.

Section 3.7. "RIGHT TO RESUBDIVIDE". Once an Estate has been purchased from WDI, such Estate shall be considered as a single unit and it shall not be resubdivided, or a portion of the Estate sold, leased or rented unless the prior written approval is given by WDI as the predecessor in title of the property to be resubdivided. This restriction on subdivision is in addition to any restriction imposed on subdivisions by the James City County Subdivision Ordinance.

Section 3.8. "CONDITION OF ESTATES AND IMPROVEMENTS". In order to maintain a quality environment for Owners of Estates, Owners of Estates shall carefully maintain their Estates and Improvements of whatever nature thereon in a safe, clean and wholesome manner and in an adequate and complete condition of repair at all times. Exterior painted or stained surfaces shall be properly maintained.

If the Owner does not maintain the Estate and the Improvements thereon in a proper manner, the Association may enter upon such Estate and undertake such maintenance as may be necessary and charge the cost of same to the Owner. If such charge is not paid within ten (10) days after such Owner is notified of the cost thereof, the Association may take any action it deems necessary to secure payment for said services, including but not limited to action to obtain a judgment and lien against said Estate for the services rendered.

Section 3.9. "LANDSCAPING".

A. Existing trees larger than four inches in caliper, at a height four feet above grade, may not be removed unless such removal is approved in advance in writing by the DRB.

B. Unless approved in writing by the DRB, Building Areas not used for Improvements shall be either left in their natural state or be suitably graded, drained, seeded, landscaped and maintained in grass or other suitable ground cover, so as to provide a pleasing setting.

C. The Association shall have the right, but not obligation, to enter upon a strip of ground thirty (30) feet in width parallel to and contiguous to all Rights of Way for the purpose of planting and caring for trees, shrubs and groundcovers.

Section 3.10. "FENCES AND WALLS". No fence, wall, or other structures shall be erected, installed or permitted to remain outside of the Building Area on each Estate without the prior written approval of the DRB. Temporary erosion and sedimentation

fences shall not require any approval from the DRB.

Section 3.11. "EXTERIOR LIGHTING". No exterior lighting shall be installed or operated without the prior written approval of the DRB. All exterior lighting must be so arranged or shielded as to minimize off site glare reflecting into the night sky or onto any adjacent property. The DRB may limit or require adjustment to exterior lighting, if in its sole and absolute judgment excessive illumination is being caused and/or such lighting is directly visible from the Carter's Grove Country Road.

Section 3.12. "EXCAVATION AND OIL DRILLING". No excavation shall be made on, and no sand, gravel or soil or other earth materials shall be removed from any Estate, except in connection with landscaping and construction of Improvements and upon the completion thereof, exposed openings shall be back-filled, compacted, and the disturbed ground shall be graded, leveled and paved or landscaped in accordance with the provisions herein.

Prospecting or drilling for oil, natural gas, coal, minerals, precious stones or kindred substances shall not be permitted on any part of any Estate.

Section 3.13. "POLLUTION, NOISE AND NUISANCES". Except as part of the normal construction process of Improvements, no use shall be permitted or maintained on any portion of any Estate which causes, produces, or contributes to any of the following:

- A. Noxious, toxic, or corrosive fumes or gases.
- B. Noise that, because of excessive or unusual volume, duration, intermittence, beat, frequency, or pitch is objectionable to Owners of other Estates on the Land or to the Foundation.

- C. Odors which might permeate or in any way adversely affect Owners of other Estates on the Land or the Foundation.
- D. The attraction of flies, insects or the creation or emission of dust or dirt.
- E. No outdoor loudspeakers, bells or horns shall be permitted.

Section 3.14. "HISTORICAL ARTIFACTS". The Owner of each Estate agrees that before any digging or excavation work is performed on any portion of any Estate, the Owner shall notify the Foundation in writing and does hereby grant a temporary easement to the Foundation on, over and under each Estate to observe such digging or excavation for the purpose of identifying the existence of any archaeological sites. If any prehistoric and/or historic artifacts are identified, the Owner does hereby grant to the Foundation an additional temporary easement for a period of ten (10) days from the date of such discovery to analyze and/or remove such artifacts. The Owners of each Estate hereby grant to the Foundation ownership rights to such artifacts removed by it.

Section 3.15. "REPAIRS". Notwithstanding that the DRB may have approved an Owner's landscape plan or an Owner's plans and specifications for a building, if the Owner, during its landscaping or construction, causes any destruction or damage to occur to trees, landscaping, road surfaces, drainage ways, storm sewer, sanitary sewer, water system or other improvements installed by WDI, utility companies or other Owners, or to existing trees, streambeds, etc. which are to be preserved, if any, which damage or destruction is not called for by the plans approved by the DRB,

then the Owner, at his own cost and expense, will restore or replace, as required by WDI, any such items so damaged or destroyed. The remedies provided by this Section shall be in addition to any other legal or equitable remedies provided by law and shall not preclude any action by the Owner against his contractor(s).

Section 3.16. "ELECTRONIC GATES". Access to the Land will be controlled by electronic gates with such rules and regulations as the Trustees of the Association shall prescribe with the cost of repair and replacement of such gates and related security system being borne by the Association.

ARTICLE FOUR

SPECIFIC ENFORCEMENT OF PROTECTIVE COVENANTS

WDI, the DRB and the Association, and each of them, reserve and are hereby separately granted, upon reasonable notice, the right to enter upon all Estates to inspect for purposes of determining compliance with these Covenants and Restrictions and further in case of any violation or breach of any of these Covenants and Restrictions, upon reasonable notice to enter upon the Estate(s) upon which or as to which such violation or breach exists, and to summarily abate and remove, at the expense of the Owner, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions herein and that WDI, the DRB and/or the Association shall not, by reason thereof, be deemed guilty of any manner of trespass for such entry, abatement, or removal. WDI, the DRB and/or the Association and

every Owner are further separately empowered to seek by legal proceedings, either in law or in equity, necessary remedies for a continuing breach of these Covenants and Restrictions. A failure to enforce any of these Covenants and Restrictions shall in no event be construed to be a waiver thereof or acquiescence in or consent to any continuing, further or succeeding breach or violation thereof.

In the event, in the opinion of the enforcing party, it shall be necessary to secure the services of an attorney to enforce the provisions of all or any of these Covenants and Restrictions, then the fee of such attorney, and all other costs in connection with any actual legal proceeding in such connection, shall become a lien against the violating Estate, but if and only if the violating Estate is finally determined by a court of competent jurisdiction to be in violation of these Covenants and Restrictions. If such costs and attorney's fees are not paid within ten (10) days, from the date of written notice of such final determination to the Owner of the Estate in question, such fee and costs shall bear interest and constitute a lien against the Estate in question.

The Foundation reserves and is hereby granted the same rights of entry, inspection, abatement, removal and enforcement hereby reserved and separately granted to WDI, the DRB and the Association but only as such rights relate to the Foundation's rights or interest under paragraphs 3.1, 3.2 (A), 3.3, 3.4, 3.5, 3.11, 3.13 and 3.14 of these Covenants and Restrictions.