

Cert Apvl
818/017

Cert Apvl
815/219

Amendment 189/263

Cert apvl 365/020

Amendment 790/028

Cert apvl 942/028

PL 786PG711

ISLAND OAKS

DECLARATION OF PROTECTIVE COVENANTS

PREAMBLE

This Declaration of Protective Covenants is made on this 22nd day of November, 1999 by Tarkiln, Inc. as owner of certain real estate in the Town of Edgartown, County of Dukes County, Massachusetts (the property herein), more particularly described in Article II.

It is the intention of the Grantor, in furtherance of a plan for the improvement and sale of the property, to sell and convey all of said property subject to the conditions, limitations, and restrictions as set forth in this Declaration of Protective Covenants.

It is the purpose of these Covenants to provide an outline for development of the property for Single-Family Residential Use for the benefit of its future owners as well as for the benefit of the residents of the Island. Every person, by acceptance of his or her lot, thereby agrees to be bound by the Covenants contained in this Declaration and each deed shall provide that the Lot is subject to these Covenants.

ARTICLE I

DEFINITIONS: Unless the context otherwise specifies or requires, the terms defined in this Article I shall, for all purposes of this Declaration, have the meanings herein specified.

GRANTOR: The term "Grantor" shall mean Tarkiln, Inc. or its nominees, successors and assigns. Any and all obligation imposed by these Covenants on the Grantor shall pass to and be assumed by its successors in title.

RESIDENTIAL LOT: The term "Residential Lot" shall mean a numbered parcel of the property which is shown on the Plan and

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numbered as Lots 1 through 43, which are now combined as per the attached schedule annexed hereto as Exhibit "A", excluding Lots numbered 5, 8, 10, 15, 23, 32, and 43, which are the Low/Moderate Income Lots as defined below.

LOW/MODERATE INCOME LOTS: The term "Low/Moderate Income Lots" shall mean seven (7) parcels of the property which are shown on the Plan as Lots numbered 5, 8, 10, 15, 23, 32, and 43, and are subject to the special conditions applicable to such Lots as specified in these covenants and by the Edgartown Resident Homesite Committee.

PLAN: The term "Plan" shall mean the plan entitled "Plan of Land in Edgartown, MA, surveyed for Betty Wells Scott, June 4, 1979, Scale 1" = 50', Dean R. Swift, Reg'd Land Surveyor, Vineyard Haven, Mass." recorded with Edgartown [Dukes] Registry of Deeds in Case File No. 204.

IMPROVEMENT: The term "improvement" shall mean and include all buildings, out-buildings, garages, carports, sheds, walls, stairs, decks, poles, signs, driveways, tennis courts (residential lots only), swimming pools and structures of every type and kind, including fences and landscaping.

WALKWAY EASEMENT: The term "Walkway Easement" shall mean those areas reserved for pedestrian access to the State Forest along the boundaries of Lots 32, 33 and 43.

SINGLE-FAMILY DWELLING: The term "Single-Family Dwelling" shall mean a detached house designed and used as a residence for a single family, including a detached or attached garage, carport or similar outbuilding not suitable for habitation. The total available living space shall be not less than 1,700 square feet.

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RESIDENTIAL AREA: The term "Residential Area" shall mean those areas of the property designated on the Plan as Lots numbered 1 to 43. See Exhibit "A".

COMMON AREA: The term "Common Area" shall mean those areas of the property designated on the Plan as Common Areas, ways and roads.

ROADWAY AREA: The term "Roadway Area" shall mean those areas of the property designated on the Plan as Ways 40 ft. wide, and the Tarkiln Path from Dodgers Hole to the property and land of Country Acres.

COMMITTEE: The term "Committee" shall mean the three members of the Homeowners Committee established for the enforcement of these Covenants and for the management of the Common Areas and the roadways.

ARTICLE II

A. PROPERTY SUBJECT TO DECLARATION: The property subject to this Declaration of Protective Covenants is the land shown on a "Plan of Land in Edgartown, MA, surveyed for Betty Wells Scott, June 4, 1979, Scale 1" = 50', Dean R. Swift, Reg'd Land Surveyor, Vineyard Haven, Mass." recorded with Edgartown [Dukes] Registry of Deeds in Case File No. 204, including the Residential Lots, the Low/Moderate Income Lots, the Common Areas, and the Roadway Areas. A Subdivision Plan of the Property was approved by the Planning Board on October 11, 1979 and endorsed on January 24, 1980. All of the lots were released from the Planning Board Covenant. A copy of said release is annexed hereto as Exhibit "B", which release was recorded with the Dukes County Registry of Deeds in Book 766, Page 404.

B. APPROVAL OF GRANTOR FOR IMPROVEMENTS: None of the improvements permitted shall be erected, placed or allowed to

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stand without the prior written approval of the Grantor or the Committee elected under Article IV, of the size, plans, including landscaping plans, specifications, and location thereof. The Committee shall adopt rules and regulations for architectural compliance with the intent and purposes set forth herein, consistent with Martha's Vineyard architecture. Such approval shall not be unreasonably withheld and a certificate thereof, in a form satisfactory for recording, shall be furnished, if requested by an owner seeking to erect, place or allow to stand upon any Lot any Improvement aforesaid. The Grantor or the Committee shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans or specifications submitted for approval.

C. **IMPROVEMENTS IN RESIDENTIAL LOTS:** It is the intention of the Grantor to minimize the prominence of all buildings and above-ground improvements built in the Residential Areas. The height, roof pitch and exterior siding shall be reviewed prior to construction to ensure that buildings be placed on the Lots blend with the landscape and are in harmony with the development of surrounding area. Each owner shall plant at least ten hardy shrubs around or near the perimeter of the foundation. Each owner shall plant trees, plants and shrubs to minimize the visual impact of an Improvement.

D. **IMPROVEMENTS IN COMMON AREAS:** It is the intention of the Grantor that the Common Areas shall be devoted to maintaining the existing character of the landscape by preventing unpermitted clearing or development. The two Common Areas shall provide the amenity of open space and a wooded buffer between the proposed development and neighbors. No improvements of any kind or

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additions or alterations thereto shall be made, erected, placed or allowed to stand, on the Common Areas except as otherwise provided or allowed herein.

(i) Those improvements relating to the prior rights of citizens, as they have existed or may exist, for passage along the Ancient Ways, i.e., "Tarkiln Path", and "Dr. Fisher Road a/k/a Willays Plain Path".

(ii) Those improvements relating to the construction and maintenance of underground utility services as may be required to provide services to the Residential Areas.

(iii) Those improvements relating to the construction and maintenance of the Roadway Areas, including any drainage and leaching pits as the Grantor and the Town of Edgartown may deem appropriate.

E. IMPROVEMENTS IN ROADWAY AREAS: The roadway improvements allowed shall be those improvements relating to the construction and maintenance of the road surfaces, drainage, underground utilities, landscape improvements, and such other improvements allowed or required by the Town of Edgartown Planning Board.

ARTICLE III

A. LAND CLASSIFICATIONS: The property has been divided into the following use classifications:

- 1. Residential Areas
- 2. Common Areas
- 3. Roadway Areas
- 4. Ancient Ways

B. PERMITTED USE AND RESTRICTIONS: Each Lot or Area within the property shall be for the use and benefit of the owner(s)

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thereof, subject, however, to all of the following limitations of use and restrictions:

1. **Use of Residential Areas:** The Residential Areas may be improved and devoted to Single-Family Residential Uses and may be further restricted and controlled by the Town zoning by-laws and any further conditions made as part of the approval by the Edgartown Board of Appeals and the Martha's Vineyard Commission.

2. **Use of Common Areas:** The Common Areas shall not be improved, except as allowed herein, and shall be devoted to open space.

3. **Use of Roadway Areas:** The Roadway Areas shall be used by any owner for all purposes for which roads and streets may be used in the Town of Edgartown. All costs for maintenance of the Roadway Areas shall be the responsibility of the owners, and the Roadway Areas shall be managed and maintained by the Committee with costs equally allocated as provided herein.

4. The Ancient Ways which are not part of the 40 ft. layout within the property shall remain open in their present state and shall not be hard surfaced or widened or otherwise improved so as to increase traffic.

C. RESTRICTIONS:

1. No improvements are permitted on Residential Lots except one Single-Family Dwelling together with a garage for the storage of not more than three (3) private automobiles, and such out-buildings, except guest houses, as are customarily appurtenant to Single-Family Dwellings in the Town of Edgartown. No garage

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shall be used for the storage of heavy commercial vehicles or construction of equipment. No business activities of any nature shall be conducted upon any Residential Lot, and no advertising signs shall be displayed thereon, except that a Lawyer, Physician, Architect or Dentist residing in a dwelling house thereon may maintain therein an office for his professional use and may display a small professional nameplate. Nothing herein shall be deemed to prevent the leasing of a Residential Lot from time to time by the owner thereof subject to all of the provisions of this Declaration.

2. Animals: No pets or other animals or birds shall be kept or maintained on any Residential Lot of such or in such number to be noisesome or offensive and no such pet, animal or bird shall be allowed to pass onto or enter land in Island Oaks other than the Residential Lot of the owner thereof, unless such pet, animal or bird is suitably leashed, caged or otherwise controlled.

3. Groundwater Protection: No underground storage tanks for fuels or chemicals of any type may be installed or placed or allowed on any part of the property herein. Any outside fuel tanks shall be at the rear or side of the Improvement.

4. Temporary Occupation: No trailer, mobile home, heavy commercial vehicle, basement of any incomplete building, tent, truck camper, shack, garage or barn or temporary structure of any kind shall be used for a residence on the property, either temporary or permanent, unless in any specific instance such use

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shall have been authorized by the Committee. The preceding section shall not apply to the Declarant, its agents, servants or employees. Temporary buildings or structures for office use or storage during the construction of "Approved" structures shall not be placed on the property until a Building Permit has been issued, and shall be removed upon the completion of construction or the expiration of said Permit or the issuance of a Certificate of Occupancy, whichever occurs first.

5. Nuisances: No refuse, rubbish, vehicle parts, junk, waste, or debris shall be placed or permitted to accumulate upon or adjacent to any Lot which will or may render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to the property, and no activity, structure or device shall be conducted, built or maintained which is or may be offensive or detrimental to any other part of the property or its owners or occupants. All unregistered motor vehicles shall be garaged and hidden from the view from the Roadway Areas.

6. Repair of Improvements: No Improvement upon any Lot shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

7. Trash Containers: No garbage, refuse or trash shall be placed or kept on any Lot, except in covered containers, and said containers shall be garaged or otherwise hidden from the view.

8. Subdivision of Lots: No Lot or Lots shall be divided or subdivided in any manner which would increase the planned

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residential density beyond the twenty-seven (27) Single-Family Dwellings which may be constructed on the Low/Moderate Income Lots, and the Residential Lots, all as designated on Exhibit "A" attached hereto.

9. Clothes Drying Facilities: No outside clothes lines or other outside facilities for drying or airing clothes which are visible from the neighboring property shall be erected or maintained on any Residential Lot.

10. Removal and Disturbance of Earth: No loam, peat, gravel, sand, clay or other mineral resource of any kind shall be excavated or removed from the Property in such a manner as to affect the surface thereof, except in conjunction with the construction of an allowed Improvement. At all times during said construction when the surface of the Lot is disturbed, the owner or his agent shall undertake adequate siltation and erosion protection measures in accordance with good landscaping and construction practices and shall loam, seed and replant any disturbed area.

11. Tree Removal: No commercial harvesting of forest products shall be allowed on the property, and "clear-cutting" and other "de-nuding" shall be prohibited, except if in conjunction with the construction of the roads, underground utilities including on-site water supplies, on-site waste disposal systems, wires and lines for the transmission of energy and information, and construction of driveways and allowed Improvements.

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12. **Damage to Traveled Surfaces:** Any damages caused to the Roadway Areas by any owner or his agents or guests, resulting from construction or any activity other than routine residential use shall be assessed against said owner and promptly repaired at his expense.

13. **Construction of Improvements:** No construction of improvements as allowed or upon expiration of review by the Committee shall take place without the issuance of a Building Permit and all other appropriate and necessary Permits from the Town of Edgartown. No excavation or site preparation may take place prior to such issuance except as required for work necessary for the proper design of any such Improvements. No building materials, tools, or equipment may be placed, stored or allowed to stand on any Lot unless a Building Permit is in effect during the time of such storage. Any such storage must be terminated upon the lapse of the Building Permit or issuance of a Certificate of Occupancy, whichever occurs first, in any event, all exterior surfaces of any such construction should be 100% completed within nine months of the issuance of the Building Permit for said construction, and within twelve months in the case of the Low/Moderate Income Lots.

ARTICLE IV

OWNERSHIP AND MANAGEMENT OF COMMON AREAS: In accordance with the provisions of the Declaration of Protective Covenants, the Common Areas shall be owned and managed as provided by this Article.

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Unless the Town of Edgartown and the Grantor elect to dedicate the fee in the Roadway Areas to the Town, said areas shall become, for purposes of this Article, additional Common Areas.

A. Ownership: Ownership of the Common Areas shall be divided equally between the owners of the numbered Lots and each owner shall have conveyed to him or her a one/twenty-seventh (1/27) undivided interest in the Common Areas (including the Roadway Area) at such time as title to the Lot is conveyed.

B. Control: At such times as twenty-six (26) of the twenty-seven (27) buildable Residential Lots have been conveyed by the Grantor, the Grantor shall then act as the owner of the remaining Lots which have not been conveyed, and the collective owners, with each Lot having one vote, shall then select three owners, of which at least one shall be an owner of a Low/Moderate Income Lot, to serve as a three member Homeowner's Committee. The Committee shall then represent the collective interests of the owners in managing the Common Areas and shall exercise those duties and functions as set forth herein.

C. Homeowner's Committee Terms: Each member of the Committee shall serve a two (2) year term, except for the original three members. Of these three, one shall serve a one (1) year term, one shall serve a two (2) year term, and one shall serve a three (3) year term. The original three members shall determine which member shall serve which initial term.

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D. **Elections:** Upon the completion of any said term, owners shall elect a new member to the Committee or re-elect the member whose term has expired, for a new two (2) year term. There shall be no limit to the number of terms which may be served by any one owner. Election procedures will be determined by the original three member Committee. In the event of a resignation at mid-term, the owners shall elect a replacement members to serve for the remainder of that term.

E. **Management by the Committee:** The Committee shall have the right to make such reasonable rules and regulations and to undertake such endeavors as to properly carry out the following activities:

1. The regulation of activities within the Common Areas in accordance with the provisions of these Covenants and the needs of the owners in conformance thereto;
2. The maintenance of the Common Areas for the activities selected by the owners in conformance with these Covenants;
3. The enforcement of any of the Covenants contained herein, including approval of construction plans and design;
4. The protection of the Walkway Easements and the Ancient Ways;
5. The collection of maintenance charges or other costs incurred in the performance of the authorized activities of the Committee. Real estate taxes and

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other municipal assessments on the Common Areas and Roadways are "Shared Costs" as provided below, but owners shall be jointly and severally liable for such assessments;

F. Shared Costs: Each owner shall have an equal ownership interest in the Common Areas. He shall be responsible for an equal share of the costs arising from the ownership of said areas. The Committee shall prepare an annual budget and shall assess a regular fee to each owner for any such costs in excess of any income that may be derived from approved activities or endeavors within said areas. Any such costs or charges shall constitute and create liens or encumbrances upon the Owner's Lots and acceptance of each deed shall be construed as an agreement to pay said charges. The Committee shall have the right to prosecute all actions or suits or take any such proper actions which may in its opinion be necessary for the collection of such charges including, without limitation, any actions pursuant to Massachusetts General Laws, Chapter 84, Section 12, or any other pertinent statutes, laws, or regulations. The liens hereby reserved shall at all times be subordinate to the liens of any mortgagees or lenders secured by properly recorded encumbrances. Owners of Low/Moderate Income Lots shall be exempt from common assessments for two (2) years following the Grantor's transfer of the Lot.

G. Insurance: The Committee shall maintain liability insurance to protect the owners against any incidents which may

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arise through use, authorized or otherwise, of the Common Areas and the Roadways.

ARTICLE V

LOW/MODERATE INCOME HOUSING LOTS: Lots 5, 8, 10, 15, 23, 32 and 43 are designated for owners chosen and qualified. Development rights shall be conveyed to the Edgartown Resident Homesite Committee. During the first two years following transfer the Low/Moderate Lots shall not be subject to common dues or assessments but thereafter are subject to their equal and/or proportional share as established by the Committee.

ARTICLE VI

A. AMENDMENT AND DURATION:

1. Amendment: These covenants, with the exceptions of those required by the Town of Edgartown may be amended or repealed by the Declarant at any time prior to the selection of the Committee as provided in Article IV of this Declaration. Any such amendment shall not be effective until such time as it has been recorded with the Dukes County Registry of Deeds. Notwithstanding the foregoing, no such amendment or repeal shall be valid, the intent of which is to alter the dedication of the Common Areas to any use, or to in any way result in an increase in the residential density of the property or in the amount of acreage dedicated to Residential Lots.

2. Amendment or Repeal: These Covenants, with the exception of those required by the Town of Edgartown or the Martha's Vineyard Commission approval, may be amended or repealed

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at any time by the written consent of two-thirds (2/3) of the owners of the property. Such amendment or repeal shall not be effective until such times as it has been recorded with the Dukes County Registry of Deeds. Notwithstanding the foregoing, no such amendment or repeal shall be valid, the intent of which is to alter the dedication of the Common Areas to any use, or to in any way result in an increase in the residential density of the property or in the amount of acreage dedicated to Residential Lots.

3. Duration of Declaration: This Declaration shall continue in full force and effect for thirty-five (35) years and may be extended for additional ten (10) year periods by a two-thirds vote of the lot owners.

B. ENFORCEMENT AND NON-WAIVER:

1. Right of Enforcement: This Declaration is for the benefit of the property and shall run with the land. Except as may otherwise be provided herein the Conservation Commission of the Town of Edgartown or any owner of any lot, including the Grantor, shall have the right to enforce any or all of the provisions of this Declaration.

2. Violation of Law: Any violation within the Property of any state law or Town of Edgartown by-law or any regulations pertaining to the ownership, occupation or use of the Property is hereby declared to be a violation of these Covenants:

3. Remedies Cumulative: Each remedy provided by this Declaration is cumulative and not exclusive.

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4. **Non-Waiver:** The failure to enforce any of the provisions of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provisions of said Declaration.

C. CONSTRUCTION AND SEVERABILITY; SINGULAR/PLURAL/GENDER:

1. **Restrictions Severable:** Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provisions.

2. **Singular Includes Plural:** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

3. **Captions:** All captions or titles used in these Covenants are intended solely for the convenience of reference and shall not affect that which is set forth in any of the provisions of said Declaration.

D. EASEMENTS:

The Grantor reserves to himself, his heirs, successors and assigns, the right to construct, permit or grant easements for the installation and maintenance of drainage facilities and the right to install and maintain all public utilities, in, over, under, along and upon the private ways; reserving also to the Grantor the right to grant easements to public service corporations for the installation and maintenance of such public

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utilities in, under and upon said private ways, and anchors and
guys to support the lines in said private ways and on land
adjacent thereto, reserving also to the Grantor the right to
installation and maintenance of necessary equipment in, under and
upon strips of land ten (10) feet in width abutting said private
ways on said Plan.

WITNESS my hand and seal this 22nd day of November, 1999.

TARKILN, INC.

By: *Peter L. Zimmerman*, *PRESIDENT*
Peter L. Zimmerman, President
and Treasurer

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

November 22, 1999

Then personally appeared the above named Peter L. Zimmerman
and declared the foregoing to be the free act and deed of
Tarkiln, Inc., before me,

Greta C. Ghiozzi
Notary Public: Greta C. Ghiozzi
My Commission Expires: 9/3/04

M:\users\general*\tarkiln\declare.2

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The twenty (20) market rate lots are:

- a. 1 and 2
- b. 3 and 4
- c. 6 and 7
- d. 9
- e. 11 and 12
- f. 13 and 14
- g. 16 and 17
- h. 18 and 19
- i. 20 and 21
- j. 22
- k. 24 and 25
- l. 26
- m. 27 and 28
- n. 29
- o. 30 and 31
- p. 33 and 34
- q. 35 and 36
- r. 37 and 38
- s. 39 and 40
- t. 41 and 42

The seven (7) affordable lots are:

- a. 5
- b. 8
- c. 10
- d. 15
- e. 23
- f. 32
- g. 43

Handwritten mark consisting of a large letter 'A' with a horizontal bar across its middle. To the upper left of the top vertex of the 'A' is a single vertical tick mark. To the upper right of the top vertex of the 'A' are two parallel vertical tick marks.

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RELEASE OF LOTS

BETTY WELLS SCOTT

SUBDIVISION

The undersigned, being a majority of the Planning Board of the Town of Edgartown, hereby certify that in consideration of the substitution of the performance guarantee described below the Planning Board voted at a duly stated meeting to release certain lots, noted below, from that section of the covenant, as noted below, which requires that the construction of ways and installation of municipal services be completed to serve those lots before such lots may be built on or conveyed.

SUBDIVISION PLAN Title: "Plan of Land in Edgartown, Mass. Surveyed for Betty Wells Scott June 4, 1979 Scale: 1"=50' Dean R. Swift Reg'd Land Surveyor Vineyard Haven, Mass." Date approved by the Planning Board: Oct. 11, 1979 Date endorsed: January 24, 1980

COVENANT: Date signed: 11 October 1979 Date recorded at Dukes County Registry of Deeds: Registry of Deeds Book No.: 373 Page No: 324

SECTION OF COVENANT HEREBY RELEASED: Form D Covenant, all

LOT(S) OF THE PLAN RELEASED: Lots 1 through 43, being all lots on the plan

PERFORMANCE GUARANTEE ACCEPTED BY PLANNING BOARD: Escrow X Bond(s) (described below)

Escrow account in the amount of \$55,000 posted by Scott Family Trust, George E. Pessotti, agent and accepted by the Edgartown Planning Board March 31, 1987.

Date Approved:

JULY 9, 1986

Majority of the Edgartown Planning Board:

James Brown
Ed W. Vincent, Jr.
Walter Walker
Rick Brown

Date Accepted

MARCH 31, 1987

CA

"B"

Edgartown, Mass. Jan. 6, 1987
at 3 o'clock and 37 minutes PM
received and entered with Dukes County Deeds
book 786 page 711

Attest:

Diane E. Powers

Register