



BP1041663

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Record and return to:
Simons & Dean
147 Wappoo Creek Drive
Suite 604
Charleston, SC 29412

Please cross-reference to:
Declaration: BP0846 at Page 099
First Amendment: BP0854 at Page 210
Declarant Resolution: BP0875 at Page 883

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS FOR
THE PRESERVE II AT FENWICK HALL
AND
PROVISIONS FOR AND BY-LAWS OF
THE PRESERVE II AT FENWICK HALL PROPERTY OWNERS
ASSOCIATION, INC.**

THIS SECOND AMENDMENT TO DECLARATION ("Second Amendment") is made this 27th day of October 2021 by 1776, LLC (a South Carolina limited liability company), hereinafter referred to as the "Declarant."

WHEREAS, Declarant made a Declaration of Covenants and Restrictions for The Preserve II at Fenwick Hall and Provisions for and By-Laws of The Preserve II at Fenwick Hall Property Owners Association, Inc. (the "Declaration"), which was recorded on December 12, 2019 at BP 0846 Page 099 with the Charleston County ROD Office;

WHEREAS, Declaration made a First Amendment to the Declaration, which was recorded on January 21, 2020 at BP 0854 at Page 210 with the Charleston County ROD Office;

WHEREAS, Declarant made a Declarant Resolution, which was recorded on April 22, 2020 at BP 0875 at Page 883 with the Charleston County ROD Office to provide for ARB Fence Guidelines, which Fence Guidelines are attached to the Declarant Resolution as Exhibit A (the "ARB Fence Guidelines");

WHEREAS, Declarant desires to amend the Declaration to allow the Declarant (and the Board of Directors after the Declarant rights have been terminated), in its sole discretion, to both grant and terminate easements, to allow certain Lots which are adjacent to the marsh/leisure trail to exclusively fence in and use certain described Common Property on the southerly side of the leisure trail to create a "live fence" along the walking trail with respect to those Lots where such easements are granted, subject to terms and conditions determined by the Declarant, including, but not limited to, a fee for the easement and the requirement that the grantee maintain the Common Property between the northern bounds of the fence easement and the marsh (except the structure of the leisure trail ("Path") as set forth by the Declarant in the respective easement agreements; and

WHEREAS, for purposes of this Second Amendment, the term "Declarant" is used throughout, although the Board of Directors will have and exercise the rights and obligations in this Second Amendment when the Declarant rights are terminated.

NOW THEREFORE, pursuant to the power reserved to Declarant under the Declaration, Declarant hereby amends the Declaration as follows:

1. The Whereas paragraphs are made a part hereof and incorporated herein.
2. The Declaration is amended to include the following new Section 7.04:

Section 7.04. Owner Common Property Easements Along the Marsh

(a) Background. The Planned Unit Development Guidelines for The Preserve at Fenwick dated May 11, 2004 and enacted as City Ordinance #2004-47 (the "Preserve PUD") provide a zero-foot setback from the rear property line for the Lots located along the northern edge of the Path, thus permitting houses to be built on the northerly/rear property line of those Lots. Section 7.03(b) provides the Declarant and the Association, and their successors and assigns, with the right to grant, reserve, and accept such easements and rights-of-way through, under, and across the Common Property. The Declarant has determined that it is in the interest of Association to grant easements to the owners of Lots along the marsh/leisure trail, those being Lots 5 through 17 (the "Marsh Lots") to exclusively fence in and use a portion of the Common Property, which will create a living fence and a partial visual barrier aligned along the march/leisure trail (the ""Path Scape") to enhance the aesthetic nature and enjoyment of the Path by Owners, subject to the terms and conditions set forth in this Section 7.04 ("Marsh Lot Easements").

(b) Grant of Marsh Lot Easements.

(1) Notwithstanding any provisions of the Declaration, as amended, and the ARB Fence Guidelines to the contrary, the Declarant shall have authority, in its sole discretion, to both grant and revoke Marsh Lot Easements. The Marsh Lot Easements shall provide sufficient setback distances from the southerly bounds of the Path to allow for both a buffer from the Path, and for plantings on the northerly side of the fence for the creation of a "living fence." In addition, the northerly bounds of the Marsh Lot Easements must be placed in a location so that all fences constructed along the Path pursuant to the Marsh Lot Easements are aligned along the entire distance of the Path, to provide a consistent and aesthetically pleasing Path Scape along the leisure trail.

- (2) The grantees of Marsh Lot Easements and their successors shall be required to:
 - (a) pay an annual fee to the Association of \$(TBD) by Board; and (b) maintain the Common Property from their respective fences to the southerly bounds of the marsh; but not including the Path surface, which Path surface shall be maintained by the Association, although the grantees shall be required to keep the Path free of debris as part of grantees' obligation to maintain the Common Property.
- (3) The form and provisions of Marsh Lot Easement agreement shall be determined solely by the Declarant.
- (4) The Declarant shall have the sole authority to both grant and terminate Marsh Lot Easements, as the Marsh Lot Easements are a privilege, not a right. If the Declarant determines to terminate a Marsh Lot Easement, the Declarant shall record a document indicating that the Marsh Lot Easement has been terminated, and the then Owner shall be required to remove the fence and any plantings within the Common Property, and return the Common Property to substantially its preexisting condition and, if not done by the Lot Owner within sixty (60) days of the recording of the termination, then the Association shall have the authority to perform such work and assess such cost to the Owner of the Lot, and file a lien against the Lot if such amount is not paid within thirty (30) days of mailing of the invoice(s) to the owner of the Lot.
- (5) As a condition of the granting of a Marsh Lot Easement, and obtaining the right to construct a fence within the Common Property and exclusively use the Common Property within the fence, the grantees shall be responsible, at its expense, to provide a survey map in recordable form which shows, among other things, the boundaries of the Lot, and the surveyed location of the fence, the Path, the bounds of the home, trees, utility easements, the DHEC critical line and setback, and the bounds of any wetlands, and any other information required by the ARB Fence Guidelines and the Declarant to be located on the survey map.
- (6) The grantees shall be responsible for complying with all laws, regulations, and codes that apply to the construction and maintenance of the fence and the use of the Common Property.
- (7) The grantee shall be responsible for providing a building permit and any other permits and approvals required by applicable laws, regulations, and codes before construction of the fence commences.
- (8) As a condition of the granting of a Marsh Lot Easement, grantees shall hold harmless and indemnify the Association and its Board of Directors for any

property damages or personal injuries that occur, or are alleged to occur, within the Marsh Lot Easement, and provide insurance coverage naming the Association as an additional insured in amounts determined by the Declarant.

- (9) The ARB shall enforce the obligations of the grantees of Marsh Lot Easements in accordance with the provisions of the Marsh Lot Easement, the Declaration, including the Covenants and the ARB Fence Guidelines, as amended from time to time.
3. This Second Amendment to Declaration shall be construed and interpreted in accordance with, and governed by, the laws of the State of South Carolina. Should any provision herein conflict with such applicable law, such conflict shall be severed from this Second Amendment to Declaration and shall not affect the validity of any non-conflicting provision of this Second Amendment to Declaration.

Except as set forth in this Second Amendment to Declaration and the First Amendment to Declaration, the Declaration shall remain in full force and effect.

IN WITNESS THEREOF, the Declarant has set its hand and seal hereto as follows:

DECLARANT

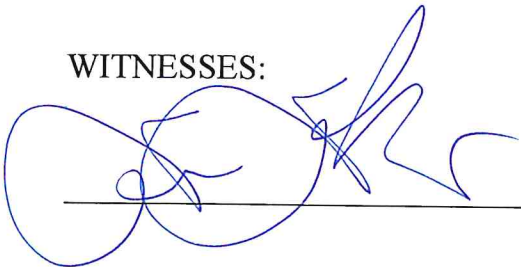
1776, LLC, a South Carolina limited liability company


By: The Eugene Zurlo Living Trust


Dated December 11, 1997

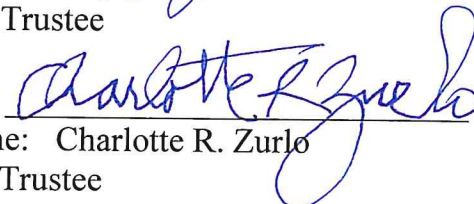
Its: Member

WITNESSES:





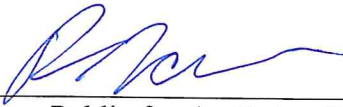
By: 
Name: Eugene J. Zurlo
Its: Trustee

By: 
Name: Charlotte R. Zurlo
Its: Trustee

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me by 1776, LLC, a South Carolina limited liability company, by The Eugene J. Zurlo Living Trust dated December 11, 1997, its Sole Member, by Eugene J. Zurlo and Charlotte R. Zurlo as Trustees this 7th day of October 2021. _____.

 (SEAL)
Notary Public for the State of South Carolina
My commission expires: 08-06-2029



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NOTE: This page **MUST** remain with the original document

Filed By:

SIMONS & DEAN ATTY AT LAW
 147 WAPPOO CREEK DR
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Michael Miller, Register Charleston County, SC		

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1776 LLC

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