

BY-LAWS
OF
THE PAINTED TREE SWIM AND RACQUET ASSOCIATION

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ARTICLE I

NAME AND LOCATION

The name of the corporation is Painted Tree Swim and Racquet Association, hereinafter referred to as the "Association." The principal office of the corporation shall be located at 145 Scaleybark Road, Charlotte, North Carolina, but meetings of members and directors may be held at such places within Mecklenburg County, North Carolina, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Painted Tree Swim and Racquet Association, 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 the "Existing Property" and any additions thereto, as are or shall become subject to the Declaration of Covenants, Conditions, and Restrictions under the provisions of Article II thereof.

Section 4. "Limited Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and designated as a "Limited Common Area" or "Limited Recreational Facility" on any plat of Walnut Creek, Section I and II duly recorded in the Mecklenburg Public Registry in accordance with the provisions of this Declaration; the Limited Common Area to be owned by the Association at the time of the conveyance of the first lot is described by metes and bounds on Schedule A attached hereto and incorporated herein by reference.

Section 5. "Lot" shall mean and refer to any plot of land, with delineated boundary line, shown upon any recorded subdivision map of the Properties with the exception of

(1) any Common Area or Common Open Space shown on any recorded map, (2) land reserved and designated for commercial use, and (3) land reserved and designated for the exclusive common use of the Owners of single-family houses.

Section 6. "Declarant" shall mean and refer to John Crosland Company, Carolina Financial Services, Inc. and Alta Enterprises, Inc. a joint venture trading as Walnut Properties, and John Crosland Company. The term "Declarant" shall also mean and refer to any person, firm or corporation which shall hereafter become vested, at any given time, with title to two or more undeveloped lots for the purposes of causing residence building(s) to be constructed thereon, and any such successor in title to Declarant defined as aforesaid shall be a declarant during such period of time as said party is vested with title to two or more such lots so long as improvements constructed thereon are unoccupied (whether undeveloped, or developed and unconveyed), but no longer.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

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 voting rights of the membership shall be appurtenant to the ownership of the lots. There shall be two classes of lots with respect to voting rights:

- (a) Class A Lots. Class A Lots shall be all lots except Class B Lots as the same are hereinafter defined. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any one Class A Lot.
- (b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been converted to Class A Lots as provided in (1) or (2) below. The Declarant shall be entitled to three (3) votes for each Class B Lot owned by it. The Class B Lots shall cease to exist and shall be converted to Class A Lots (and Declarant shall be entitled to one (1) vote per Lot for each of the aforesaid converted Class A Lots):

- (1) When the total number of votes appurtenant to the Class A Lots equal the total number of votes appurtenant to the Class B Lots; or
- (2) Upon April 1, 1980;

whichever occurs earlier.

ARTICLE IV

PROPERTY RIGHTS

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

- (a) The right of the Association to charge reasonable admission and other fees to persons other than Owners for the use of any recreational facilities situated upon the Limited Common Area and to limit the use of any such recreational facilities to Owners who occupy a residence on the properties and to their families, tenants, contract purchases and guests as provided in Section 2 of this Article IV;
- (b) The right of the Association to suspend the voting rights and enjoyment rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty days for any infraction or its published rules and regulations;
- (c) 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 the Members entitled to at least three-fourths (3/4) of the votes appurtenant to each Class of Lots (Class A and B) agree to such dedication or transfer and signify their agreement by a signed and recorded written instrument, provided that this subsection shall not preclude the Board of Directors of the Association from granting easement for the installation and maintenance of sewerage, utilities and drainage facilities upon, over, under and across the Common Area without the assent of the membership when, in the opinion of such Board, such easements are necessary for the convenient use and enjoyment of the Properties;
- (d) The right of the Association, with the written assent of Members entitled to at least sixty percent (60%) of the votes appurtenant to each Class of Lots (Class A and Class B), to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for the money borrowed or debts incurred.

Section 2. Delegation of Use.

- (a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Mecklenburg County, North Carolina.
- (b) Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Mecklenburg County, North Carolina.
- (c) Guests. Recreational facilities situated upon the Properties may be utilized by guests of Owners, tenants or contract purchasers subject to the rules and regulations of the Association, as may be established by its Board of Directors, governing said use.

ARTICLE V

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter at the hour of 8 p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the President, Secretary or Board of Directors, or upon written request of the members entitled to one-fourth (1/4) of the votes appurtenant to Class A Lots.

Section 3. Place of Meetings. All meetings of the members shall be held at such place, within Mecklenburg County, North Carolina, as shall be determined by the Board of Directors of the Association.

Section 4. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than fifteen (15) days nor more than fifty (50) days before the date of the meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify a place, day and hour of the meeting, and in the case of a special meeting, the purpose of the

meeting. Waiver by a member in writing of the notice required herein signed by him before or after such meeting, shall be equivalent to the giving of such notice.

Section 5. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes appurtenant to each Class A and Class B Lots shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 6. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Each proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

Section 7. Informal Action of Members. Any action which may be taken at a meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association minute book.

ARTICLE VI

BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the Association shall be managed by a Board of Directors.

Section 2. Number, Term and Qualification. The number of directors of the Association shall be nine. At the first annual meeting the members shall elect three directors to serve for a term of one year, three directors to serve for a term of two years and three directors to serve for a term of three years. At each annual meeting thereafter the members shall elect three directors to serve for a term of three years. Each director shall hold office until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies. Directors need not be members of the Association.

Section 3. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the

Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 4. Election. Except as provided in Section 6 of this Article, the directors shall be elected at the annual meeting of the members by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled under the provisions of Article III of these By-Laws. The persons receiving the highest number of votes shall be elected. Cumulative voting is not permitted.

Section 5. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association.

Section 6. Vacancies. A vacancy occurring in the Board of Directors may be filled by the selection by the remaining directors of a successor who shall serve for the unexpired term of his predecessor. The members may elect a director at any time to fill any vacancy not filled by the directors.

Section 7. Compensation. No director shall receive compensation for any service he may render to the Association in the capacity of director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

ARTICLE VII

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice of such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act of decision done or made by a majority of

the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal Action by Directors. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5. Chairman. A Chairman of the Board of Directors shall be elected by the directors and shall preside over all the Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board of Directors to serve until a new President is elected.

ARTICLE VIII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

- (a) Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) Suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association pursuant to the provisions of the Declaration. Such rights may also be suspended after notice and hearing for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- (c) Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles or Incorporation, or the Declaration;
- (d) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;
- (e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and
- (f) Employ attorneys to represent the Association when deemed necessary;
- (g) Grant easements for the installation and maintenance of sewerage, utilities or drainage facilities upon, over, under and across the Common Area without the assent of the membership when such easements are requisite for the convenient use and enjoyment of the Properties; and

- (h) Appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- (a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members entitled to at least one-fourth (1/4) of the votes appurtenant to Class A Lots;
- (b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) As more fully provided in the Declaration, to:
 - (1) Fix the amount of the annual assessment against each Lot at least thirty (30) days before January of each year;
 - (2) Send written notice of each assessment against each Lot at least fifteen (15) days and before January 1 of each year to every Owner subject thereto;
 - (3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same;
- (d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificates shall be conclusive evidence of such payment;
- (e) Procure and maintain adequate liability insurance covering the Association and adequate hazard insurance on the real and personal property owned by the Association;
- (f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and
- (g) Cause the Common Area and all facilities erected thereon to be maintained.

ARTICLE IX

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of the Association shall be elected annually by the Board, and each shall hold office for one (1) year unless he shall sooner resign or shall be removed or be otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

- (a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President

- (b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

- (c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the

Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

- (d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare and annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE X

COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE XI

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association where copies may be purchased at reasonable cost.

ARTICLE XII

ASSESSMENTS

As more fully provided in Article V of the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six (6%) per cent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property; and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

ARTICLE XIII

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: Walnut Creek Swim and Racket Association, Charlotte, North Carolina.

ARTICLE XIV

AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present, in person or by proxy; except that the Federal Housing Administration or the Veterans Administration shall have the right to veto the amendments while there are Class B Lots.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XV

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

PAINTED TEE SWIM AND RACQUET
ASSOCIATION

BY _____
President

SCHEDULE A

BEGINNING at a point on the easterly line of the eighty-foot right-of-way of Carmel Road Extension, said Beginning point being located 150.41 feet in a northeasterly direction along the easterly margin of said Carmel Road Extension from the point of intersection of the northeasterly margin of the right-of-way line of Painted Tree Road, if extended, and the easterly margin of the right-of-way line of Carmel Road Extension, if extended, said point also being located North 35 degrees 03 minutes 14 seconds East 150.33 feet from the aforesaid intersection; thence from said beginning point South 58 degrees 45 minutes 20 seconds East 676.91 feet to a point; thence South 80 degrees 00 minutes East 381.97 feet to a point; thence South 18 degrees 16 minutes East 130.60 feet to a point; thence South 9 degrees 38 minutes West 484 feet to a point; thence South 28 degrees 10 minutes West 387.0 feet to a point; thence South 11 degrees 36 minutes 50 seconds West 80.18 feet to a point; thence South 0 degrees 35 minutes 30 seconds East 57.19 feet to a point; thence South 15 degrees 11 minutes 40 seconds East 245.01 feet to a point; thence South 36 degrees 27 minutes 40 seconds East 105.70 feet to a point; thence South 41 degrees 42 minutes 10 seconds East 500.00 feet to a point; thence South 1 degree 00 minutes East 160.0 feet to a point; thence South 49 degrees 00 minutes West 370.0 feet to a point; thence South 8 degrees 00 minutes West 210.0 feet to a point; thence South 60 degrees 30 minutes West 120.0 feet to a point; thence South 72 degrees 30 minutes West 240.0 feet to a point; thence 74 degrees 20 minutes West 880.0 feet to a point; thence North 15 degrees 45 minutes West 210.0 feet to a point; thence South 46 degrees 13 minutes 40 seconds West 780.93 feet to a point. Thence North 45 degrees 50 minutes West 870.0 feet to a point; thence North 87 degrees 10 minutes West 215.0 feet to a point; thence North 31 degrees 10 minutes West 300.0 feet to a point. Thence North 10 degrees East 220.0 feet to a point; thence North 80 degrees 00 minutes East 210.0 feet to a point; thence North 21 degrees 15 minutes East 175.0 feet to a point thence North 8 degrees 30 seconds West 585.0 feet to a point; thence North 80 degrees 33 minutes 10 seconds East 235.0 feet to a point; thence North 12 degrees 30 minutes East 661.06 feet to a point; thence North 4 degrees 30 minutes West 320.0 feet to a point; thence North 85 degrees 30 minutes East 350.0 feet to a point; thence along the arc of a circular curve to the left having a radius of 1300.34 feet, an arc distance of 1220.09 feet to the point of BEGINNING containing 147.70 acres.